

# VIDEOTAPE DEPOSITION OF BERNARD N. GROFMAN, Ph.D. 2/3/2012

<p style="text-align: center;">UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN</p> <hr/> <p>ALVIN BALDUS, CINDY BARBERA, CARLENE BECHEN, RONALD BIENDSEIL, RON BOONE, VERA BOONE, ELVIRA BUMPUS, EVANJELINA CLEEREMAN, SHEILA COCHRAN, LESLIE W. DAVIS III, BRETT ECKSTEIN, MAXINE HOUGH, CLARENCE JOHNSON, RICHARD KRESBACH, RICHARD LANGE, GLADYS MANZANET, ROCHELLE MOORE, AMY RISSEUW, JUDY ROBSON, GLORIA ROGERS, JEANNE SANCHEZ-BELL, CECILIA SCHLIEPP, and TRAVIS THYSSEN,</p> <p style="text-align: center;">Plaintiffs,</p> <p>TAMMY BALDWIN, GWENDOLYNNE MOORE, and RONALD KIND,</p> <p style="text-align: center;">Intervenor-Plaintiffs,</p> <p style="text-align: center;">v. <span style="float: right;">File No. 11-CV-562</span></p> <p>Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE,</p> <hr/> <p style="text-align: center;">[Caption Continued]</p> <p style="text-align: center;"><b>VIDEOTAPE DEPOSITION</b> <b>BERNARD N. GROFMAN, Ph.D.</b></p> <p style="text-align: center;">Milwaukee, Wisconsin February 3, 2012</p> <p style="text-align: center;">Susan C. Milleville, Court Reporter</p>	<p style="text-align: center;"><u>I N D E X</u></p> <p><b>2</b> <u>Witness</u> <span style="float: right;"><u>Pages</u></span></p> <p><b>3</b> BERNARD N. GROFMAN, Ph.D.</p> <p><b>4</b> Examination by Mr. Poland <span style="float: right;">6/208</span></p> <p><b>5</b> Examination by Mr. Earle <span style="float: right;">147/213</span></p> <p><b>6</b> Examination by Mr. Hodan <span style="float: right;">212</span></p> <p><b>7</b></p> <p><b>8</b></p> <p><b>9</b> <u>E X H I B I T S</u></p> <p><b>10</b> <u>No.</u> <u>Description</u> <span style="float: right;"><u>Identified</u></span></p> <p><b>11</b> 129 Subpoena <span style="float: right;">7</span></p> <p><b>12</b> 130 December 27, 2011 E-mail <span style="float: right;">19</span></p> <p><b>13</b> 131 Invoice <span style="float: right;">20</span></p> <p><b>14</b> 132 Excerpts from Dr. Mayer's report <span style="float: right;">21</span></p> <p><b>15</b> 133 Excerpts from expert reports <span style="float: right;">22</span></p> <p><b>16</b> 134 Spreadsheet prepared by Dr. Mayer <span style="float: right;">23</span></p> <p><b>17</b> 135 Act 43 data sent by Mr. Hodan <span style="float: right;">24</span></p> <p><b>18</b> 136 Legislative plan with respect to 2010 census <span style="float: right;">24</span></p> <p><b>19</b> 137 January 24, 2011 E-mails <span style="float: right;">26</span></p> <p><b>20</b> 138 February 7, 2011 and February 14, 2011 E-mails <span style="float: right;">28</span></p> <p><b>21</b> 139 June 13, June 15, June 27 and July 7, 2011 E-mails <span style="float: right;">30</span></p> <p><b>22</b></p> <p><b>23</b></p> <p><b>24</b></p> <p><b>25</b> (Continued)</p>
<p>and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,</p> <p style="text-align: center;">Defendants,</p> <p>F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI, PAUL D. RYAN, JR., REID J. RIBBLE, and SEAN P. DUFFY,</p> <p style="text-align: center;">Intervenor-Defendants.</p> <hr/> <p>VOCES DE LA FRONTERA, INC., RAMIRO VARA, OLGA VARA, JOSE PEREZ, and ERICA RAMIREZ,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v. <span style="float: right;">Case No. 11-CV-1011 JPS-DPW-RMD</span></p> <p>Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,</p> <p style="text-align: center;">Defendants.</p> <hr/>	<p><b>1</b> <u>E X H I B I T S</u> (Continued)</p> <p><b>2</b> <u>No.</u> <u>Description</u> <span style="float: right;"><u>Identified</u></span></p> <p><b>3</b> 140 January 11, 2011 Declaration <span style="float: right;">39</span></p> <p><b>4</b> 141 Document showing calculations <span style="float: right;">60</span></p> <p><b>5</b> 142 Article by Nathan Persily <span style="float: right;">99</span></p> <p><b>6</b> 143 Plaintiffs' original complaint (Voce de la Frontera) <span style="float: right;">157</span></p> <p><b>7</b> 144 Color map showing ward populations and voter turnout <span style="float: right;">175</span></p> <p><b>8</b></p> <p><b>9</b> (The original exhibits were attached to the original transcript and copies were provided to counsel)</p> <p><b>10</b></p> <p><b>11</b></p> <p><b>12</b></p> <p><b>13</b></p> <p><b>14</b></p> <p><b>15</b></p> <p><b>16</b></p> <p><b>17</b></p> <p><b>18</b></p> <p><b>19</b></p> <p><b>20</b></p> <p><b>21</b></p> <p><b>22</b></p> <p><b>23</b></p> <p><b>24</b> (The original deposition transcript was filed with Attorney Douglas M. Poland)</p> <p><b>25</b></p>

# VIDEOTAPE DEPOSITION OF BERNARD N. GROFMAN, Ph.D. 2/3/2012

1 VIDEOTAPE DEPOSITION of BERNARD N. GROFMAN, Ph.D.,  
2 a witness of lawful age, taken on behalf of the  
3 Plaintiffs, wherein Alvin Baldus, et al., are  
4 Plaintiffs, and Members of the Wisconsin Government  
5 Accountability Board, et al., are Defendants, pending  
6 in the United States District Court for the  
7 Eastern District of Wisconsin, pursuant to subpoena,  
8 before Susan C. Milleville, a Court Reporter and  
9 Notary Public in and for the State of Wisconsin, at  
10 the offices of Reinhart Boerner Van Deuren, S.C.,  
11 Attorneys at Law, 1000 North Water Street, in the  
12 City of Milwaukee, County of Milwaukee, and State of  
13 Wisconsin, on the 3rd day of February 2012,  
14 commencing at 10:12 in the forenoon.

15

16 A P P E A R A N C E S

17

18 DOUGLAS M. POLAND, Attorney,  
19 for GODFREY & KAHN, S.C., Attorneys at Law,  
20 One East Main Street, Suite 500, Madison,  
21 Wisconsin 53703, appearing on behalf of  
22 Plaintiffs Alvin Baldus, et al.

23

24 PETER G. EARLE, Attorney,  
25 for LAW OFFICE OF PETER EARLE, LLC, Attorneys at Law,  
839 North Jefferson Street, Suite 300,  
Milwaukee, Wisconsin 53202, appearing on behalf  
of Plaintiffs Voces De La Frontera, Inc.,  
et al.

5

1 A P P E A R A N C E S (Continued)

2 JACQUELINE E. BOYNTON, Attorney,  
3 for LAW OFFICE OF JACQUELINE BOYNTON,  
4 Attorneys at Law, 2266 North Prospect Avenue,  
5 Suite 505, Milwaukee, Wisconsin 53202,  
6 appearing on behalf of Plaintiffs  
7 Voces De La Frontera, Inc., et al.

8

9 MARIA S. LAZAR, Assistant Attorney General,  
10 for STATE OF WISCONSIN DEPARTMENT OF JUSTICE,  
11 17 West Main Street, Madison, Wisconsin 53703,  
12 appearing on behalf of the Defendants.

13

14 PATRICK J. HODAN, Attorney,  
15 for REINHART BOERNER VAN DEUREN S.C.,  
16 Attorneys at Law, 1000 North Water Street,  
17 Suite 2100, Milwaukee, Wisconsin 53202,  
18 appearing on behalf of the Defendants.

19

20 Also present: Joseph Handrick  
21 Kelli Nagel  
22 James Porter, CDVS  
23 JP Legal Videography Services  
24 (312) 965-4463

25

BERNARD N. GROFMAN, Ph.D.,  
called as a witness, being first duly sworn,  
testified on oath as follows:

EXAMINATION

23 By Mr. Poland:  
24 Q Good morning, Professor Grofman.  
25 A Good morning.

6

1 Q I am Doug Poland. I represent one of the groups  
2 of the plaintiffs in this action, and I will be  
3 starting out asking questions today.

4 Dr. Grofman, did you receive -- I should ask  
5 you first, do you prefer to be addressed as  
6 doctor? Professor?

7 A Whichever you prefer. Professor is fine. Doctor  
8 is fine. I prefer professor.

9 Q Let's use professor then. Professor Grofman, did  
10 you receive a subpoena to appear for your  
11 deposition today?

12 A If I did, I am not directly aware of it. I was  
13 informed of the date of the deposition.

14 (Exhibit No. 129 marked for  
15 identification)

16 Q I'm going to hand you a document that we have  
17 marked as Exhibit No. 129.

18 A Uh-huh. I'm sorry.

19 Q I have plenty of copies of this. Professor  
20 Grofman, have you seen Exhibit 129 before?

21 A I'm sorry. Exhibit 129?

22 Q That's right. That's the exhibit that's in front  
23 of you.

24 A Let's see.

25 MR. HODAN: Counsel, I'll represent

7

1 on the record that I showed it to Professor  
2 Grofman this morning.

3 MR. POLAND: Thank you, Mr. Hodan.

4 A Yes. I was just verifying that this was the  
5 exhibit I was shown. That's all.

6 Q Very well. Would you please turn to the second to  
7 the last page of Exhibit 129. You will see at the  
8 top it has a caption or a heading that states  
9 Exhibit A?

10 A Yes.

11 Q There are a number of numbered paragraphs on  
12 Exhibit A. Exhibit A is two pages long.

13 A Yes.

14 Q And it identifies a number of different materials  
15 that you were instructed to produce in accordance  
16 with the subpoena. Do you see that?

17 A Yes.

18 Q Did you look for and produce all documents that  
19 are in your possession, custody or control that  
20 fall within the descriptions in the numbered  
21 paragraphs in Exhibit A?

22 A The answer to that is I'm now looking only at the  
23 moment at numbered Number One. The answer to that  
24 is yes with the exception of such E-mails as  
25 between myself and counsel that are simply

8

1 communications that do not refer to specific  
2 exhibits being prepared in the case, and there is  
3 one other piece of material which is being  
4 provided actually in the documents that are being  
5 copied.  
6 Q They will be back in the room shortly and we can  
7 go through them then.  
8 A Yes. So that has to do with Item Number One.  
9 Actually, all documents you control -- I should  
10 make one further important exception, potentially  
11 important exception. "All documents you  
12 consulted, reviewed or relied upon." That  
13 includes, for example, everything I've ever  
14 written, so, therefore, producing all of that  
15 material would be difficult indeed though I would  
16 indicate that virtually everything I have ever  
17 written is available for public access on my  
18 website. That includes all publications that are  
19 in refereed journals, all major articles in books  
20 and my most recent amicus curiae briefs that I  
21 participated in before the U.S. Supreme Court.  
22 Q I understand that there is a considerable body of  
23 literature that is referred to in the CV that is  
24 attached to your expert report. I assume that if  
25 there were something specific that you were

9

1 relying on from the body of literature that you  
2 have either written or consulted that applied  
3 directly to one of the opinions you expressed in  
4 your rebuttal report that you would have cited to  
5 that particular reference in your rebuttal report?  
6 A That probably is correct, though, there certainly  
7 is a huge body of material that I have reviewed or  
8 read over the years which I rely upon to form the  
9 general bases of my conclusions that I might not  
10 have specific referenced by name in that report.  
11 If I am asked to elaborate on aspects of that  
12 report, I will of course provide such citations.  
13 Q I understand. As with we go through the report,  
14 which we will do, if there is something that isn't  
15 clear, I may very well ask you about where you  
16 drew that statement from.  
17 I wanted to go back and ask you about the  
18 E-mails you mentioned a minute ago. The E-mails  
19 that you did not produce with the materials here  
20 today, those were simply transmittal E-mails  
21 between you and counsel for the GAB in this case;  
22 is that correct?  
23 A Yes. That's correct. There may be other  
24 communications that are beyond transmittal of  
25 documents.

10

1 Q What I'm interested in finding out is whether  
2 there were any E-mails between you and counsel for  
3 the defendants in this case that related either to  
4 your compensation, to the materials that you have  
5 considered in preparing your opinions or materials  
6 that were provided by counsel to you that they  
7 asked you to consider or that stated assumptions  
8 that they wanted you to make in formulating your  
9 opinions.  
10 A Communications vis-à-vis compensation were handled  
11 with an initial phone call. There are no  
12 communications involving anything that has to do  
13 with the formulation of my opinion. There are  
14 communications that have to do with either my  
15 requests for other expert witness reports or my  
16 requests for pleadings in the case so that I can  
17 familiarize myself with the posture of the case  
18 and in some cases there are E-mails that transmit  
19 those documents to me, documents that are public  
20 in the case.  
21 Q And you brought those with you today, I believe,  
22 and we have got them here on the table. We will  
23 go through them.  
24 A Yes.  
25 Q What I would like to know now, though, is whether

11

1 there are any E-mails that you have not turned  
2 over to us today that represent communications or  
3 consist of communications between you and counsel  
4 that address either your compensation, materials  
5 that were being provided to you or that you were  
6 asking for that would provide a basis that you  
7 were considering in formulating your opinions or  
8 that reflect assumptions you were asked to make in  
9 formulating your opinions.  
10 A There certainly are no communications which  
11 reflect on assumptions I am asked to make, and any  
12 other communications refer to materials which are  
13 essentially matters of public record in this case,  
14 or, if they are not, and I believe there is only  
15 one exception to that, they are matters which are  
16 turned over or they are publications of my own.  
17 Q You mentioned one exception. What's the exception  
18 you're referring to?  
19 A The one exception is something which is being  
20 given to you today.  
21 Q Very well. It's being copied now and we will have  
22 it shortly?  
23 A Yes. Exactly.  
24 Q Terrific. Did we then exhaust your review of  
25 Exhibit A, the documents that were requested?

12

1 A Let me just double-check all of these other  
2 materials. I've only so far responded to my  
3 review of the lettered subsections within numbered  
4 Paragraph One. The answer to that is all such  
5 materials are now matters of public record. They  
6 include some depositions that were taken in this  
7 case that might in fact bear on matters that are  
8 enumerated in those numbered sections but they  
9 were all matters that are essentially public.  
10 Q Very well. I will note for the record that we  
11 have a number of documents that Mr. Hodan has  
12 provided us with this morning. I'm not going to  
13 mark these all as exhibits. I would like to ask  
14 you, though, for the record -- we will just get it  
15 on the record -- to identify what these materials  
16 are. It appears that you received documents that  
17 include the reports that were tendered by experts  
18 retained for the defendants in this case and  
19 namely that is Mr. John Diez, correct?  
20 A Uh-huh. Yes.  
21 Q And then Professor Keith Gaddie?  
22 A Yes.  
23 Q And then Professor Morrison's report as well?  
24 A Yes.  
25 Q You also reviewed reports, received and reviewed a

13

1 rebuttal report prepared by Dr. Mayer who is an  
2 expert witness for the Baldus group of plaintiffs,  
3 correct?  
4 A Yes.  
5 Q And you also received a rebuttal report that  
6 Dr. Mayer prepared for the Voces de la Frontera  
7 group of plaintiffs, correct?  
8 A Yes.  
9 Q I'm just going through the stacks that I have in  
10 front of me here. You received a copy of the  
11 original complaint for declaratory and injunctive  
12 relief?  
13 A Yes.  
14 Q And that, for the record, was the complaint that  
15 was filed by the Baldus plaintiffs on June 10th, a  
16 first amended complaint for declaratory and  
17 injunctive relief?  
18 A Yes.  
19 Q A second amended complaint for declaratory and  
20 injunctive relief?  
21 A Yes.  
22 Q You received the defendants' answer and  
23 affirmative defenses to the second amended  
24 complaint?  
25 A Yes.

14

1 Q And then you received and reviewed a motion to  
2 dismiss that the defendants filed, correct?  
3 A Yes.  
4 Q It appears that there was a full set of the briefs  
5 that were filed. There was a response to the  
6 motion to dismiss and then there was a reply brief  
7 in support of the motion to dismiss the amended  
8 complaint and then an order denying motion to  
9 dismiss, correct?  
10 A Yes. That's correct. I received all of those  
11 materials. One minor modification to the language  
12 that you used. You indicated reviewed. I would  
13 not probably use that phrase. I would simply  
14 indicate that I received these documents. I have  
15 in fact skimmed some of these documents but with  
16 particular attention to those elements of them  
17 that might bear upon the testimony vis-à-vis  
18 racial and linguistic and ethnic issues in the  
19 case.  
20 Q Very well. Then you also received motions to  
21 intervene and briefs in support of motions to  
22 intervene that were filed by James Sensenbrenner,  
23 Thomas Petri, Paul Ryan, Reid Ribble and  
24 Sean Duffy?  
25 A I believe so, yes.

15

1 Q Did you review that motion to intervene?  
2 A No.  
3 Q Do you know which statute that motion to intervene  
4 applies to?  
5 A No, I do not.  
6 Q I'm going to represent that the issues that were  
7 raised by that motion to intervene pertained to  
8 2011 Wisconsin Act 44 which was the congressional  
9 districts that were enacted. I would like to ask  
10 you as a follow-up to that statement, do any of  
11 your opinions that you have expressed or intend to  
12 express in this case relate to Wisconsin Act 44  
13 which is the congressional districts?  
14 A No specific factual materials concerning the  
15 Wisconsin congressional case have I reviewed or  
16 formed an opinion based upon.  
17 Q In addition, you have reviewed transcripts from  
18 several depositions, correct?  
19 A Yes. Again, subject to the provision that I have  
20 received transcripts from several depositions and  
21 reviewed them to the extent that they deal with  
22 matters of relevance to my own testimony.  
23 Q Very well. You received a copy of a deposition of  
24 Tad Ottman that was taken on December 22, 2011; is  
25 that correct?

16

1 A Yes. That's correct.  
 2 Q Did you review Mr. Ottman's deposition?  
 3 A Yes. To the extent that it dealt with issues or  
 4 might have dealt with issues that might be  
 5 relevant.  
 6 Q Then you received a copy of the deposition of  
 7 Mr. Handrick taken on December 20, 2011?  
 8 A Yes, I did.  
 9 Q Did you review Mr. Handrick's deposition  
 10 transcript?  
 11 A In exactly the same fashion; that is to say only  
 12 with respect to those issues that might be  
 13 relevant, potentially relevant, to my testimony.  
 14 Q Did you receive the transcript of Dr. Mayer's  
 15 deposition taken a week ago today on January 27th?  
 16 A Yes, I did.  
 17 Q Did you review Dr. Mayer's deposition transcript?  
 18 A Yes, I did. Again, subject to the same provision.  
 19 Q And you received a copy of a transcript of the  
 20 deposition of Adam Foltz taken on December 21,  
 21 2011?  
 22 A I believe that is correct. Yes.  
 23 Q I assume that you reviewed it to the extent that  
 24 Mr. Foltz's testimony bears on opinions you have  
 25 rendered in this case?

17

1 A Exactly.  
 2 Q And then the final stack of documents that I  
 3 have -- well, actually, I think we looked at that  
 4 one already. The 2002 materials. That's right.  
 5 It appears that you received from Mr. Hodan on  
 6 December 23rd a copy of your declaration and  
 7 direct testimony that you gave in the Baumgart  
 8 case back in 2002, correct?  
 9 A Yes.  
 10 Q In addition, you received a copy of the response  
 11 and supplemental declaration and direct testimony  
 12 from the same case, correct?  
 13 A Yes.  
 14 Q And then there is also a second response of the  
 15 supplemental declaration that you gave back in  
 16 2002 that's included in the materials?  
 17 A Yes.  
 18 Q Did you ask Mr. Hodan to provide those materials  
 19 to you?  
 20 A Yes.  
 21 Q You also gave a deposition in 2002 in the Baumgart  
 22 case, correct?  
 23 A Yes.  
 24 Q A copy of that transcript was provided to you as  
 25 well?

18

1 A Yes.  
 2 Q And then finally we have a North Carolina Law  
 3 Review article from June 2001 that appears to have  
 4 been marked as an exhibit to your deposition back  
 5 in 2002; is that correct?  
 6 A Yes.  
 7 Q Did you ask Mr. Hodan to provide those materials  
 8 to you as well?  
 9 A With the exception of the -- I had forgotten that  
 10 the law review article was an exhibit, but, yes, I  
 11 asked him to provide materials from my 2002  
 12 involvement in the previous case.  
 13 Q Very well. And then the last document that I have  
 14 in front of me here -- actually, that's not quite  
 15 true. There are two documents. There is an  
 16 E-mail from Mr. Hodan to you dated Tuesday,  
 17 December 27th. The subject line is Raw Population  
 18 Data. Why don't we go ahead and mark this as a  
 19 small one.  
 20 (Exhibit No. 130 marked for  
 21 identification)  
 22 Q Mr. Grofman, I'm handing you a copy of a document  
 23 that the court reporter has marked as Exhibit 130.  
 24 Can you identify that document for the record,  
 25 please.

19

1 A Yes. This is a document provided to me by  
 2 Patrick Hodan. It includes the Act 43 demographic  
 3 data for both the assembly and I believe the state  
 4 senate. I will double-check. It's also I believe  
 5 included in the materials that are being Xeroxed.  
 6 Q Which I believe we now have. You can set that to  
 7 the side.  
 8 MR. HODAN: Just make sure.  
 9 THE WITNESS: There should be two  
 10 file folders.  
 11 Q Professor Grofman, turning your attention back to  
 12 Exhibit 130.  
 13 A I'm sorry. Exhibit 130 is --  
 14 Q I believe it's over to your right, the spreadsheet  
 15 of data that was E-mailed out.  
 16 A Yes. Here we are. I buried it.  
 17 Q Did you ask Mr. Hodan to provide Exhibit 130 to  
 18 you?  
 19 A Yes, I did.  
 20 (Exhibit No. 131 marked for  
 21 identification)  
 22 Q You can set that to the side a moment. You have  
 23 also provided this morning a copy of an invoice  
 24 that we have marked as Exhibit No. 131. I'm  
 25 handing that to you now.

20

1 A Yes.  
2 Q Is that the only invoice that you have submitted  
3 to date in the case?  
4 A Yes. That's correct. To be completely accurate,  
5 I should indicate that this is the invoice I have  
6 submitted. However, there is a retainer as well.  
7 Q Very well. Professor Grofman, there were a number  
8 of materials that we just had photocopied. We're  
9 going to just mark these and run through them  
10 here.  
11 A Uh-huh.  
12 (Exhibit No. 132 marked for  
13 identification)  
14 Q I'm handing you document that has been marked as  
15 Exhibit 132. Can you identify that for the  
16 record, please.  
17 A Yes. This consists of excerpts from the report,  
18 the first report, of Professor Mayer.  
19 Q Those are pages that you pulled out of Dr. Mayer's  
20 report that were of interest?  
21 A That's correct.  
22 (Exhibit No. 133 marked for  
23 identification)  
24 Q Professor Grofman, I'm handing you what we have  
25 marked as Exhibit 133. Can you identify that for

21

1 the record, please.  
2 A These are again excerpts from reports of various  
3 experts in the case. The pages are slightly out  
4 of order, but Page 7, numbered Page 7, which is  
5 the first page, numbered Page 10, which is the  
6 fifth page, numbered Page 11, numbered Page 12,  
7 numbered Page 18, numbered Page 19, numbered  
8 Page 22, numbered page 22, which somehow seems to  
9 be in there twice, and also the -- those items,  
10 the ones I have indicated as having page numbers,  
11 are from the first report or first declaration of  
12 Professor Mayer. In addition, there is one page  
13 which is from -- two pages which are from -- three  
14 pages which are from Peter Morrison's report and  
15 also two pages at the very end of Exhibit No. 133  
16 which are from the deposition of Kenneth Mayer  
17 dated January 27, 2012.  
18 Q Those pages that comprise that exhibit then are  
19 ones that you pulled out of the various sources  
20 you referred to before?  
21 A Exactly. That's correct. This was done to -- I'm  
22 responding not to a question but to clarify. This  
23 was done to move the process faster to the extent  
24 that I could by simply having documents which I'm  
25 likely to make reference to handy.

22

1 Q Move the process of the deposition forward?  
2 A Exactly.  
3 (Exhibit No. 134 marked for  
4 identification)  
5 Q Understood. I'm handing you a copy of what has  
6 been marked as Exhibit No. 134, some paper clipped  
7 documents. Can you identify those for the record,  
8 please.  
9 A This is Exhibit No. 1025 in Professor Mayer's  
10 deposition. That's the first two pages. And then  
11 the next page is an excerpt from the report of --  
12 that's numbered Page 11. It's the third page in  
13 the exhibit. It's from a report by Professor  
14 Morrison. And then the last page is information  
15 about the hotel I'm staying at.  
16 Q Oh, we probably didn't need to mark that, but  
17 that's fine. I'll note for the record that  
18 there's a copy of the subpoena for your deposition  
19 here today. We don't need to mark that for the  
20 record. We have already marked it. And then we  
21 have two other documents here that we will mark,  
22 and then we should be done with marking of the  
23 documents.  
24 (Exhibit Nos. 135 and 136 marked for  
25 identification)

23

1 Q Professor Grofman, I'm going to hand you a  
2 document that's been marked as Exhibit 135. Can  
3 you identify that the record, please.  
4 A That document appears to be identical to a  
5 previous document. Let me just check the  
6 numbering here. I need to straighten out which  
7 documents are which. I believe, and I'll verify  
8 this if you give me a moment, that this document  
9 labeled 135 is in fact a reproduced version of  
10 document Exhibit 130.  
11 Q That's the Act 43 data that Mr. Hodan sent to you  
12 back in December?  
13 A That's correct.  
14 Q Finally, we have Exhibit No. 136 I'm handing to  
15 you. Can you identify that for the record,  
16 please.  
17 A Yes. This is data on the previous legislative  
18 plan for both the senate and for the assembly with  
19 respect to 2010 census data. It is a State  
20 document of some kind provided me by counsel.  
21 Q Is that a document that you asked to be given to  
22 you, Exhibit 136?  
23 A I believe that is correct. It is also possible  
24 that it's a document that is simply a copy of  
25 material that is provided in some other material

24



1 that is in the stack of things that has previously  
2 been referenced, that's the documents that have  
3 been today turned over to you as materials that  
4 counsel has sent me. I honestly do not remember  
5 whether this was something specifically sent to me  
6 upon request, or, rather, it was a document which  
7 was contained as an exhibit in something which was  
8 sent to me.  
9 Q And Exhibits 135 and 136, did you separately  
10 include those documents within the materials you  
11 brought with you today for the purpose of moving  
12 the process along during the deposition?  
13 A Exactly.  
14 Q Professor Grofman, when were you retained to serve  
15 as a testifying expert for the defendants in this  
16 case?  
17 A I believe the answer to that is approximately  
18 November 22nd.  
19 Q Were you involved in any way in the redistricting  
20 process during 2011 before the passage of Act 43?  
21 A No, I was not.  
22 Q Were you consulted by any of the lawyers who are  
23 representing the assembly or the senate in the  
24 redistricting process about the possibility of  
25 participating in the process?

25

1 A I was not involved in any way or consulted. An  
2 inquiry was given me in I believe August of last  
3 year as to whether I might be available to  
4 participate as an expert witness or as a  
5 consultant in the case were there to be a case.  
6 (Exhibit No. 137 marked for  
7 identification)  
8 Q Professor Grofman, I'm handing you a copy of a  
9 document that's been marked as Exhibit 137. I  
10 will note for the record this is not a document  
11 that you authored or received. I simply want to  
12 draw your attention to the middle E-mail in the  
13 chain in 137. Do you see there's an E-mail from  
14 Jim Troupis to Joseph Handrick on January 24,  
15 2011?  
16 A Yes.  
17 Q Do you see that? Do you see there's a reference  
18 in Mr. Troupis' E-mail where he says he's still  
19 trying to get to Dr. Grofman? Do you see that?  
20 A Yes.  
21 Q Did you have any communications with Mr. Troupis  
22 in January of 2011 about redistricting in  
23 Wisconsin?  
24 A I had a communication from Troupis' office at some  
25 point in 2011, I honestly don't remember when but

26

1 it was before August, essentially asking me to get  
2 in touch with his office. As I remember it, I  
3 attempted to do so and kept getting the answering  
4 machine. I believe that I did not actually  
5 communicate with Mr. Troupis until August of 2011  
6 but I could be in error and it is possible that I  
7 actually talked with him or had some E-mail  
8 communication with him prior to that time. It is  
9 really in August that I am brought into this case.  
10 Q You know Mr. Troupis from the previous round of  
11 redistricting in Wisconsin in 2002, correct?  
12 A Yes. That's correct.  
13 Q I know that you have testified in depositions  
14 before, correct?  
15 A Yes.  
16 Q Many times?  
17 A Yes.  
18 Q We need to be careful that we don't talk over one  
19 another just to make sure the court reporter can  
20 get down what we're saying.  
21 Had you spoken to Mr. Troupis between the  
22 time of the Baumgart litigation, the last  
23 redistricting litigation in Wisconsin in 2002, and  
24 then sometime in 2011?  
25 A Yes. Sorry. Have I spoken with him between the

27

1 Baumgart litigation and any time in 2011? The  
2 answer to that is no.  
3 Q But you did speak with Mr. Troupis at some point  
4 in 2011 about the redistricting in Wisconsin.  
5 A That's correct.  
6 (Exhibit No. 138 marked for  
7 identification)  
8 Q Professor Grofman, I'm handing you a copy of a  
9 document that's been marked as Exhibit 138.  
10 Again, this is an E-mail chain that you were not  
11 included on. I wanted to draw your attention to  
12 the very first E-mail in Exhibit 138. Do you see  
13 there's an E-mail from Mr. Gaddie, Dr. Gaddie, to  
14 Jim Troupis on Monday, February 14th, and  
15 Mr. Gaddie provides Mr. Troupis with your E-mail  
16 address? Do you see that?  
17 A Yes. That's correct.  
18 Q Did Mr. Troupis contact you by E-mail on or around  
19 the middle of February?  
20 A Without checking, it's impossible for me to be  
21 clear on exactly what the date was in which I  
22 received a communication from Mr. Troupis, but  
23 that communication was, as I recall, an extremely  
24 brief one basically asking me to get in touch with  
25 him.

28

1 Q The E-mail address that Mr. Gaddie or that  
2 Dr. Gaddie provides to Mr. Troupis in Exhibit 138  
3 is Bgrofman@uci.edu. Do you see that?  
4 A Yes.  
5 Q Was that your correct E-mail address at that time?  
6 A That is an E-mail address which is my "official"  
7 E-mail address at the University of California  
8 Irvine. It is an E-mail address that I actually  
9 check relatively infrequently. It is not the  
10 E-mail address that is most commonly used by my  
11 colleagues who wish to contact me because it is an  
12 E-mail address that is essentially mostly junk  
13 mail.  
14 Q Do you keep in contact with Professor Gaddie?  
15 A I think the general answer to that would be no. I  
16 certainly have communicated with Keith Gaddie in  
17 the last decade. I'm trying to remember how  
18 often. Probably a couple of times.  
19 Q Have you spoken with Professor Gaddie about the  
20 Wisconsin redistricting that was accomplished in  
21 2011?  
22 A No, I have not.  
23 (Exhibit No. 139 marked for  
24 identification)  
25 Q Professor Grofman, you did at some point get in

29

1 contact with Mr. Troupis about the redistricting  
2 in Wisconsin, correct?  
3 A Yes. That's correct.  
4 Q I'll hand you a copy of what's been marked as  
5 Exhibit 139. Take a minute and flip through it.  
6 A Good. Thank you very much. This clarifies my  
7 memory because, as I indicated, I had been trying  
8 to respond to Mr. Troupis' E-mail but didn't get  
9 response from Mr. Troupis and then I was out of  
10 town or out of the country, and, as you see here,  
11 someone from Mr. Troupis' office, I believe his  
12 daughter, asked that maps be forwarded to me. But  
13 I actually -- let's see. I sent him a response.  
14 I sent him a response basically indicating that I  
15 exist, that I still do redistricting and that if  
16 he wished to talk to me about Wisconsin  
17 redistricting he could give me a call.  
18 Q So I would like to take you to the E-mail. This  
19 is on the first page.  
20 A Yes.  
21 Q And you will see that at the top third of the page  
22 or so or about the middle third of the page there  
23 is an E-mail that says, "Mr. Grofman, my father,  
24 Jim Troupis, asked that I forward you these maps  
25 while he is away for the next few days." Do you

30

1 see that?  
2 A Yes.  
3 Q Do you recall Sarah Troupis forwarding you maps --  
4 A Yes.  
5 Q -- in June?  
6 A Yes.  
7 Q Do you know what the maps were?  
8 MR. HODAN: Excuse me, Counsel.  
9 You mean July?  
10 MR. POLAND: Yes. July.  
11 Q You were forwarded maps by Sarah Troupis on or  
12 around July 7, 2011?  
13 A I honestly am not sure at this point what maps  
14 those were because I'm not quite clear on exactly  
15 what maps existed when.  
16 Q You are one step ahead of me here. I want to just  
17 go back and ask whether Sarah Troupis did in fact  
18 send maps to you on or around July 7, 2011.  
19 A Yes. That's correct.  
20 Q Now on to the question that you were getting to  
21 which is what were the maps that Sarah Troupis was  
22 sending to you.  
23 A I assume that these were maps of a Wisconsin  
24 legislative plan. What Wisconsin legislative plan  
25 in honesty I do not remember.

31

1 Q Do you know whether you still have copies of the  
2 plans that were sent to you by Sarah Troupis on  
3 July 7, 2011?  
4 A I should, yes.  
5 Q The next sentence in Sarah Troupis' E-mail states,  
6 "If this is not the information you are expecting,  
7 please let me know and I will see about getting  
8 you what you are looking for." Do you see that  
9 statement?  
10 A Yes.  
11 Q Do you recall making a request to Mr. Troupis or  
12 to Sarah Troupis for specific information?  
13 A I believe that if I had it would have been a  
14 request for whatever was then the current map in  
15 the state of Wisconsin.  
16 Q By the current map --  
17 A Whatever the legislature had done.  
18 Q Do you recall the 2002 map was a court-drawn map?  
19 A Yes.  
20 Q Is that the map that you're referring to?  
21 A No.  
22 Q You're referring to at whatever stage the proposed  
23 map was?  
24 A Yes. That is correct.  
25 Q Why were you requesting that information from

32



1 Mr. Troupis in July 2011?

2 A So that if I were to be retained I would have an

3 idea of what my possible testimony might look like

4 if that were indeed the map that would be at

5 issue.

6 Q And would that be a retention for the purpose of

7 passing the legislation, advising the legislature

8 on the legislation or for the purpose of

9 litigation?

10 A Purpose of litigation. I was not in any way

11 involved in any consultation with the legislature

12 or any individuals who are employed by the

13 legislature about the line drawing process in

14 Wisconsin.

15 Q You have anticipated my question again. Were you

16 asked to provide or did you provide any feedback

17 on any draft or proposed maps that ended up being

18 included within Act 43?

19 A No, I did not.

20 Q When did you first speak with Mr. Troupis about

21 the potential of being retained to testify in

22 litigation?

23 A My best memory is that this is sometime in August

24 and that essentially what Mr. Troupis does is to

25 indicate that the question of which law firms are

33

1 involved in litigation was not clear but that he

2 would arrange for me to be in touch with attorneys

3 for the law firm for which Mr. Hodan is employed

4 and that that in fact occurred by telephone.

5 Q The date on this E-mail exchange is July, correct?

6 A Yes.

7 Q Do you believe that by July you had spoken with

8 Mr. Troupis about the possibility of being

9 retained for litigation?

10 A My belief is no because I was in Europe at the

11 time. So I was gone and not in a position to be

12 discussing much of anything with anybody. I was

13 on vacation or at least on a combination of work

14 and vacation in Europe. My memory is that I come

15 back in early August, mid August -- early August I

16 think I am back in the United States, and sometime

17 after my return to the United States is when the

18 phone call where Mr. Troupis arranges for me to

19 discuss possible retention or actually just to

20 discuss the case with Mr. Hodan takes place.

21 Q But yet you were asking for information back in

22 the beginning of July, the July 7th time frame,

23 correct?

24 A Certainly. I would ask for information in any

25 case partly because after two decades of Wisconsin

34

1 I'm interested.

2 Q You must have had some conversation with

3 Mr. Troupis on or before July 7th about the

4 possibility of testifying if you're asking for

5 information. Is that fair to say?

6 A The only conversations I can remember are a

7 conversation, sorry, are an E-mail in which

8 Mr. Troupis says might you be interested if there

9 is litigation in testifying. I took for granted,

10 since I have in fact worked with Mr. Troupis, that

11 that was potential invitation to be involved in

12 litigation were litigation to take place and that

13 therefore I, interested in Wisconsin, asked for

14 information that might be relevant to such a

15 potential case.

16 Q Did you in fact speak with Mr. Troupis and

17 Mr. Hodan in August 2011 --

18 A Yes, I did. Sorry.

19 Q -- about the possibility of testifying in

20 litigation?

21 A Yes. That's correct. That's my memory at least.

22 Q That's fine. That's all we can ask for today is

23 your memory. When in August did those

24 conversations with Mr. Troupis and Mr. Hodan

25 occur?

35

1 A Sometime in mid to late August.

2 Q Those were telephone conversations or a telephone

3 conversation?

4 A Yes.

5 Q How many times did you speak on the phone with

6 Mr. Troupis and Mr. Hodan about the possibility of

7 testifying as a witness in the litigation?

8 A My memory is that I spoke with Mr. Troupis and

9 Mr. Hodan jointly once and that all subsequent

10 conversations were with Mr. Hodan.

11 Q After you spoke with Mr. Troupis and Mr. Hodan in

12 August, what was the next time that you spoke with

13 Mr. Hodan?

14 A Sometime in August as I recall, but I'm not

15 actually sure. I honestly do not remember the

16 specific sequence because it is not until sometime

17 in November that I regard myself as sort of

18 officially involved in the case.

19 Q What did you and Mr. Troupis and Mr. Hodan speak

20 about when you spoke with them in August?

21 A Whether or not I might be available to participate

22 in the case.

23 Q Did you indicate to them that you were available

24 to participate?

25 A I indicated that I would almost certainly be

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1 available subject to my travel plans and the exact  
2 timing of the litigation.  
3 Q Did you discuss at all the issues that you might  
4 testify about in the litigation?  
5 A I indicated that my own testimony would probably  
6 deal with issues having to do with African  
7 American and Hispanic populations in the case.  
8 Q Why did you make that indication to Mr. Hodan and  
9 Mr. Troupis?  
10 A Because this was the area of my principal  
11 involvement in the case in past decades.  
12 Q Did you discuss at that time in August with  
13 Mr. Hodan and Mr. Troupis the substance of what  
14 your testimony might be on the issues of African  
15 Americans and Hispanics under Act 43?  
16 A No, I did not.  
17 Q Did you receive at that time a copy of the  
18 complaint that was then the operative complaint in  
19 the case?  
20 A Again, I am honestly not sure of the exact dates  
21 at which I received materials. I can indicate  
22 that sometime in November I started looking at  
23 things with the idea that I might use the  
24 materials that had been provided me to form the  
25 basis of opinions in the case on matters having to

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1 do with racial, ethnic, linguistic representation  
2 and that actually to the best of my recollection  
3 it was not until sometime in November that I  
4 reviewed any materials in sufficient depth to even  
5 to begin to think about the formulation of  
6 opinions in the case.  
7 Q Before November did you have any conversations  
8 about potential testimony as an expert in this  
9 particular case with anyone other than Mr. Hodan  
10 and Mr. Troupis?  
11 A I believe there were other attorneys involved. I  
12 am not sure. I believe Mr. Kelly was a  
13 participant in one phone conversation. I'm not  
14 sure of the names of any other attorneys who I  
15 might have spoken with. There were others, I  
16 believe, perhaps others including those in this  
17 room, but my principal focus was in simply  
18 exploring the possible dates where deposition  
19 testimony or trial testimony might be required  
20 because of the complexities of my own travel  
21 schedule.  
22 Q You have provided us today with some printouts of  
23 some spreadsheets and some data. We have not  
24 received any materials in any electronic media, so  
25 we haven't received -- we have received in some

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1 previous depositions flash drives, USB drives that  
2 had spreadsheets and various data on them and we  
3 received some CDs with data on them. We haven't  
4 received anything for you. Is it a fair  
5 assumption that you do not have any data in  
6 electronic format either on a computer or a flash  
7 drive or a CD that has not been provided to us  
8 today?  
9 A Yes. That is correct.  
10 Q So any data that you have used to formulate your  
11 opinions would be contained within the materials  
12 that we have before us today?  
13 A Yes. That is correct.  
14 Q You did not do any independent research or  
15 analysis of data that you generated for the  
16 purpose of this litigation. Is that fair to say?  
17 A Yes. That is.  
18 Q You worked with data that was provided to you by  
19 others, correct?  
20 A That is correct.  
21 (Exhibit No. 140 marked for  
22 identification)  
23 Q Dr. Grofman, I'm handing you a copy of what the  
24 court reporter has marked as Exhibit No. 140. Do  
25 you have that in front of you?

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1 A Yes, I do. Thank you.  
2 Q That is your expert report in this case, correct?  
3 A Yes. That's the expert witness report plus  
4 appendices which are labeled as Exhibits A through  
5 Exhibit G.  
6 Q Have you prepared any other reports for this case?  
7 A No, I have not.  
8 Q Do you anticipate or expect that you will produce  
9 any other reports for this case?  
10 MR. HODAN: I'm going to object.  
11 We haven't decided at this point. After the  
12 expert discovery deadline your expert did  
13 some supplemental work that we believe is  
14 late and that violates the court order  
15 regarding preparation of expert materials.  
16 We may move to strike. We may ask  
17 Dr. Grofman to respond to that. We haven't  
18 decided yet. If he does, we obviously will  
19 provide you with a copy with any additional  
20 materials or any analysis that he does.  
21 MR. EARLE: Speaking for the  
22 plaintiffs, I vigorously disagree with your  
23 characterization of that work by Dr. Mayer  
24 and I note that the work produced by  
25 Dr. Mayer is among the material reviewed by

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# VIDEOTAPE DEPOSITION OF BERNARD N. GROFMAN, Ph.D. 2/3/2012

1 Dr. Grofman. It's in his materials that he  
2 selected and you guys copied.

3 MS. LAZAR: We're talking about the  
4 work that Dr. Mayer did after his rebuttal  
5 report before his deposition. There was a  
6 deadline for discovery of experts' reports.

7 MR. EARLE: I understand that.  
8 That material has been provided to  
9 Dr. Grofman.

10 MS. LAZAR: Correct.  
11 MR. EARLE: And he reviewed it.

12 MS. LAZAR: But that has nothing to  
13 do with his report.

14 MR. EARLE: It's part of  
15 Exhibit 133.

16 MR. HODAN: Well, we can argue in  
17 front of the judge. We don't need to argue  
18 here. It was provided subsequent to the  
19 deadline to provide rebuttal reports.

20 MS. LAZAR: In January.  
21 MR. EARLE: But, by the same token,  
22 Dr. Grofman's report was not provided except  
23 as a rebuttal report and was not provided on  
24 December 14th when it should have been  
25 provided because the defendants failed

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1 entirely to address any of the allegations in  
2 the Section 2 complaint by Voces de la  
3 Frontera with regards to the three prongs of  
4 *Gingles* and then waited for a rebuttal to  
5 attack Dr. Mayer's report.

6 MR. HODAN: We will take it up with  
7 the court.

8 Q Professor Grofman, you have Exhibit No. 140 in  
9 front of you, correct?

10 A Yes, I do.

11 Q I would like to ask you some questions about that  
12 report that you prepared. When were you asked to  
13 prepare Exhibit 140?

14 A Sometime in late November 2011.

15 Q Who asked you to prepare Exhibit 140?

16 A The attorney with whom I spoke most, most often  
17 and indeed almost exclusively, was Mr. Hodan.

18 Q What was the request made of you in preparing your  
19 report?

20 A To review the materials in the case and to address  
21 as a rebuttal witness those issues that dealt with  
22 racial and ethnic representation and opportunities  
23 for representation in the state of Wisconsin.

24 Q Now, you had served as an expert witness back in  
25 2002 in the *Baumgart* case, correct?

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1 A Yes, I did.

2 Q And your report back in 2002 and your testimony  
3 dealt with racial and ethnic issues in the city of  
4 Milwaukee, correct?

5 A Yes.

6 Q Related to African American districts within the  
7 city of Milwaukee?

8 A Yes.

9 Q And also related to Latino districts within the  
10 city of Milwaukee?

11 A Yes.

12 Q Is it fair to say that those were both areas with  
13 which you had experience?

14 A Yes.

15 Q Fair to say that those are both areas with which  
16 you have knowledge?

17 A Yes.

18 Q Indeed you testified as an expert in 2002,  
19 correct?

20 A Yes.

21 Q Were you given any particular direction or focus  
22 to the specific issues that you were to provide a  
23 report to address?

24 A The instructions that I was given were to as an  
25 expert review the materials in the case,

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1 particularly those materials that had to do or  
2 actually exclusively those materials that had to  
3 do with racial and ethnic/linguistic  
4 representation in the state of Wisconsin and to  
5 assess the accuracy of statements made in those  
6 reports and to prepare a report of my own  
7 commenting on the potential for African American  
8 and Latino representation in the state of  
9 Wisconsin.

10 Q We have a document that's previously been marked  
11 as an exhibit. It's the second amended complaint.  
12 I believe it's in the materials that you have  
13 provided here today. I'm going to hand you a copy  
14 of that.

15 MR. POLAND: I do not have copies  
16 for everyone. I'm hoping everyone has a copy  
17 of the complaint.

18 Q Professor Grofman, you have seen the second  
19 amended complaint before, correct?

20 A Yes, I have.

21 Q Is the second amended complaint a document that  
22 you reviewed in making a determination about what  
23 opinions you would express in this litigation?

24 A Yes and no. The yes is that insofar as this  
25 document references items having to do with racial

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1 and ethnic/linguistic representation the answer is  
 2 yes. Insofar as this document addresses issues  
 3 that do not fall within that purview, for example,  
 4 issues having to do with the congressional  
 5 representation not in any way involving issues of  
 6 race or ethnicity the answer is no.  
 7 Q I would like you to turn to Page 14 of the second  
 8 amended complaint. I would like you to look at  
 9 the portion of Page 14 that identifies First Claim  
 10 Legislative Boundaries Unconstitutionally  
 11 Sacrifice Redistricting Principles. Do you see  
 12 that?  
 13 A Yes.  
 14 Q If you look at the paragraphs that are on Page 14  
 15 and then continue on to Page 15, you will see that  
 16 there are references, and I'm looking here  
 17 specifically at Paragraph 32, to geographical  
 18 compactness. Do you see that in Paragraph 32(a)?  
 19 A Yes, I do.  
 20 Q Are you expressing any opinions on geographical  
 21 compactness?  
 22 A I have not reviewed in any detail other than to  
 23 simply skim the reports of experts in the process  
 24 of looking for material of specific relevance to  
 25 those areas in which I would be testifying that

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1 deal with the issues of legislative compactness.  
 2 I do not anticipate providing testimony on that,  
 3 though, of course, the question of what additional  
 4 testimony I would be asked to give is a matter for  
 5 determination by attorneys and not simply my own  
 6 judgment. But I have not prepared nor have I  
 7 reviewed in detail these elements of the case.  
 8 Q And turning your attention on Page 15 there's a  
 9 Paragraph B the first sentence of which states,  
 10 "The 2011 assembly districts do not preserve core  
 11 populations from prior districts." Do you see  
 12 that statement?  
 13 A What page are we on?  
 14 Q We're on Page 15. It's Paragraph B.  
 15 A Yes. I see that statement.  
 16 Q Have you prepared any analysis or been asked to  
 17 look at a preservation of core populations from  
 18 prior districts?  
 19 A No, I have not.  
 20 Q If you turn the page to Page 16, there is a  
 21 Paragraph C that refers to the state senate  
 22 districts. Do you see that?  
 23 A Yes.  
 24 Q And the statement says, "Many of the 2011 state  
 25 senate districts also do not preserve core

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1 populations from prior districts." Do you see  
 2 that?  
 3 A Yes.  
 4 Q And you have not been asked to render opinions on  
 5 preservation of core populations from previous  
 6 state senate districts?  
 7 A I have not been asked to prepare testimony on any  
 8 matters having to do with core populations.  
 9 Q I would like you to look at Page 17, please.  
 10 Two-thirds of the way down the page you will see a  
 11 Paragraph D that states, "The new legislative  
 12 districts do not preserve communities of interest  
 13 and instead needlessly divide cities and other  
 14 local government units." Do you see that?  
 15 A Yes.  
 16 Q Have you been asked to evaluate and provide  
 17 opinions on preservation of communities of  
 18 interest?  
 19 A No, I have not.  
 20 Q And what about division of cities and local  
 21 government units?  
 22 A The answer to that one is no. I would amend my  
 23 first answer by noting that communities of  
 24 interest to the extent that they include African  
 25 American and Latino populations -- of course those

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1 are a matter which fall within the scope of my  
 2 testimony.  
 3 Q Have you examined the ways in which Act 43 divides  
 4 communities of interest?  
 5 A No, I have not. Beyond those ways in which are  
 6 specifically referenced in my declaration having  
 7 to do with African American and Latino populations  
 8 as shown in exhibits to that declaration the  
 9 answer is no.  
 10 Q We will get to those when we go through your  
 11 report then. If you look at Pages 18 to 19, at  
 12 the bottom of Page 18 there's a Paragraph E. That  
 13 states, "Other legislative boundaries also  
 14 unnecessarily shift populations and fracture  
 15 Native American communities that have historically  
 16 been represented by the same representative." Do  
 17 you see that statement?  
 18 A Yes, I do.  
 19 Q On Page 19 there are references to the members of  
 20 the Oneida Nation in the paragraph that is (i)?  
 21 A Yes.  
 22 Q And (ii) refers to members of the  
 23 Stockbridge-Munsee and Menomonee tribes. Do you  
 24 see those?  
 25 A Yes.

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1 Q Have you been asked to render any opinions with  
2 respect to those Indian, Native American,  
3 communities?  
4 A No, I have not.  
5 Q I would like you to turn to Page 20, please.  
6 There was a second claim that's alleged on Page 20  
7 of Exhibit No. 11. That claim states, "The  
8 legislation does not recognize local government  
9 boundaries." Do you see that?  
10 A Yes, I do.  
11 Q Were you asked to express an opinion on that  
12 claim?  
13 A No, I was not.  
14 Q Would you please look at Page 21 of the second  
15 amended complaint. There is a third claim that  
16 alleges legislative districts unnecessarily  
17 disenfranchise 300,000 Wisconsin citizens. Do you  
18 see that?  
19 A Yes, I do.  
20 Q Were you asked to evaluate or provide an opinion  
21 on disenfranchisement of Wisconsin citizens under  
22 Act 43?  
23 A No, I was not.  
24 Q Turn to Page 23, please. There's a fourth claim,  
25 that refers to congressional districts. And,

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1 again, just to confirm, you have not been asked to  
2 express any opinions on congressional districts,  
3 correct?  
4 A Yes. That is correct.  
5 Q Turn to Page 25, please. There was a fifth claim  
6 that asserts congressional and legislative  
7 districts constitute unconstitutional  
8 gerrymandering. Do you see that?  
9 A I'm sorry. Where are we on that page?  
10 Q Page 25. There's a caption that says Fifth Claim  
11 right in the middle of the page.  
12 A Oh, okay. Sorry. Yes. I see that.  
13 Q Were you asked to evaluate or provide any opinions  
14 on whether Act 43 constitutes unconstitutional  
15 gerrymandering?  
16 A No, I was not.  
17 Q I would like you to turn to Page 29, please. You  
18 will see there is a sixth claim that is asserted,  
19 Legislative Districts Violate the Federal Voting  
20 Rights Act. Do you see that?  
21 A Yes.  
22 Q And that is a claim that you were asked to  
23 evaluate and provide opinions on, correct?  
24 A Yes. That is correct.  
25 Q I would like you to turn to Page 31. There's a

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1 seventh claim asserted, Legislative Districts  
2 Unconstitutionally Use Race as a Predominant  
3 Factor. Do you see that?  
4 A Yes.  
5 Q Were you asked to provide opinions on that  
6 particular claim?  
7 A Insofar as -- that is again a yes and a no.  
8 Insofar as that claim extends to the way in which  
9 minority districts, Latino or African American  
10 districts, in the city of Milwaukee are drawn, the  
11 answer to that is yes. With respect to other  
12 matters, for example, Racine-Kenosha, the answer  
13 is no.  
14 Q If you turn to Page 33, please. There's an eighth  
15 claim that's asserted. That claim alleges that  
16 new congressional and legislative districts are  
17 not justified by any legitimate state interest.  
18 Do you see that?  
19 A Yes.  
20 Q Were you asked to consider and give an opinion  
21 with respect to the eighth claim?  
22 A No, I was not.  
23 Q If you turn to Page 34, this is the last claim  
24 that's alleged in the second amended complaint,  
25 the ninth claim which alleges that any special or

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1 recall elections cannot be conducted under Act 43.  
2 That is not a topic that you were asked to provide  
3 an opinion on, correct?  
4 A Yes. That is correct.  
5 Q Professor Grofman, you prepared your report as a  
6 rebuttal report, correct?  
7 A Yes. That is correct.  
8 Q And you refer to opinions stated by Dr. Mayer in  
9 your rebuttal report, correct?  
10 A Yes. That is correct.  
11 Q I would like you to turn to Page 2 of your  
12 rebuttal report. This is Exhibit 140.  
13 A Yes.  
14 Q Paragraph Four on Page 2 of your rebuttal report  
15 states that Exhibit B shows the racial and  
16 Hispanic demographic data on population and voting  
17 age population characteristics of Act 43  
18 legislative districts using 2010 census data. Do  
19 you see that?  
20 A Yes.  
21 Q Did you use or -- strike that question. What is  
22 the data that you're referring to in Paragraph  
23 Four on Page 2 of your report?  
24 A That is data provided me by counsel. That also is  
25 reflected in one of the other exhibits that is

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1 found here. If you will give me a moment, I  
2 can --  
3 Q Of course. That's one of the documents you  
4 brought with you this morning, correct?  
5 A Yes. That is correct. I believe that is -- it  
6 has two different names. I believe that's  
7 Document No. 130. I'm sorry. Document No. 135.  
8 Also Document No. 130.  
9 Q So Exhibit 135, I believe that was the spreadsheet  
10 of Act 43 data that Mr. Hodan provided to you in  
11 December?  
12 A Yes. That is correct.  
13 MR. EARLE: Is that this? We  
14 didn't get them written down, the numbers  
15 down, right. Could we pause for a moment off  
16 the record?  
17 MR. POLAND: Why don't we go off  
18 the record. We're going to make a notation  
19 on these.  
20 MR. EARLE: It's a housekeeping  
21 detail here.  
22 (Discussion off the record)  
23 Q Professor Grofman, just to orient ourselves here,  
24 we were talking about Page 2 of your expert  
25 report. Do you recall that?

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1 A Yes.  
2 Q I would like to continue on and ask you, in  
3 Paragraph Five of your report you refer to  
4 Exhibit C and state that it shows racial and  
5 Hispanic demographic data on population and voting  
6 age population characteristics of the court-drawn  
7 2002 legislative districts using 2010 census data.  
8 Do you see that?  
9 A Yes.  
10 Q Where did you obtain the data that you used to  
11 create Exhibit C of your report?  
12 A That also is data that was provided by counsel. I  
13 believe it is shown in one of the exhibits. I  
14 don't have the exhibit -- I do not have the  
15 exhibits by exhibit number. I believe it is  
16 Exhibit No. 136, but I could be in error.  
17 Q It's one of the exhibits that's going to be coming  
18 back to us?  
19 A Yes.  
20 Q All right. We will come back to that one too  
21 then. Continuing on Page 2, Paragraph Six,  
22 there's a reference to Exhibit D which shows the  
23 racial and Hispanic demographic data on population  
24 and voting age population characteristics of the  
25 court-drawn 2002 legislative districts using 2000

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1 census data. Do you see that?  
2 A Yes.  
3 Q And where did you draw that data from?  
4 A That again comes from some State official document  
5 because that would be a document presumably from  
6 an earlier time period because it refers to the  
7 2002 legislative districts. I believe this was  
8 data that was furnished me by counsel. It's  
9 possible also that it is data that -- my belief  
10 is, and I may be in error, is that it is included  
11 in the materials that have been handed over  
12 because it was an exhibit in some material of  
13 material that was handed over.  
14 Q Do you recall whether it might have been included  
15 within a report filed by one of the other experts  
16 in the case?  
17 A My best recollection is that it's probably  
18 included in something filed by plaintiffs in this  
19 case, but I could be in error.  
20 Q The data that you refer to is census data,  
21 correct?  
22 A Yes.  
23 Q And this is in Paragraphs Four, Five and Six?  
24 A Yes. That is correct. Sorry.  
25 Q You did not consider or review citizenship data as

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1 part of the preparation of your opinions in this  
2 case; is that correct?  
3 A Yes and no. I did not independently generate  
4 information about citizenship data or in this case  
5 attempt to estimate citizenship voting age  
6 populations of districts contained within the  
7 state of Milwaukee (sic) either at the assembly  
8 level or at the state senate level. I did in the  
9 process of preparation of my expert witness  
10 declaration review statements contained in  
11 Dr. Mayer's report that referenced citizen voting  
12 age population.  
13 Q Fair enough. Outside of Dr. Mayer's report, did  
14 you review or consider any citizenship data with  
15 respect to the minority districts in Milwaukee?  
16 A No, I did not, though, again, just again for  
17 accuracy and clarification, there is also some  
18 reference to citizen voting age population data in  
19 I believe Dr. Gaddie's report.  
20 Q Might it have been Dr. Morrison's report?  
21 A It is possible it was Dr. Morrison's report.  
22 Q Would we see that as we walk through your report  
23 here? Do you think you have references to that?  
24 A This report does not specifically reference to the  
25 best of my recollection, and we can verify that

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1 just by perusing it -- this report does not  
2 specifically reference citizen voting age  
3 population data.  
4 Q There also is no data in your rebuttal report of  
5 turnout percentages in the African American or  
6 Latino districts in Milwaukee; is that correct?  
7 A Yes. That is correct.  
8 Q And you did not, as part of your work in preparing  
9 Exhibit 140, perform any polarization analysis  
10 yourself, correct?  
11 A That is also correct.  
12 Q I would like you to turn to Page 3 of your report,  
13 please. I would like to draw your attention to  
14 Paragraph 9(a). You make the statement in  
15 Paragraph 9(a), "Act 43 preserves almost entirely  
16 intact in new S4 and new S6 the black population  
17 core located in old S4 and old S6." Do you see  
18 that?  
19 A Yes. That's correct.  
20 Q There you're referring to Senate Districts 4 and  
21 6, correct?  
22 A Yes. That is correct.  
23 Q You then go on to state, "In particular 98.4  
24 percent of the previous African American  
25 population found in either Old S4 or Old S6," and

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1 then you identify the numbers, "is now located in  
2 either New S4 or New S6." Do you see that?  
3 A Yes. That's correct.  
4 Q Where did you draw that information from, that  
5 data that you rely on there?  
6 A I drew that information from I believe data in the  
7 report of Expert Witness Diez, I'm not sure how  
8 his name is pronounced, where data is provided on  
9 population movement from the 2002 district lines  
10 to the 2011 district lines.  
11 Q Now, we did previously mark Mr. Diez's report as  
12 an exhibit in this litigation. I'm going to hand  
13 a copy of that to you.  
14 A Yes.  
15 Q I would like you to identify for me where in  
16 Mr. Diez's report you drew that information from.  
17 A This would be in what he refers to as a core  
18 constituencies report, and the data on that report  
19 is divided into three components; core  
20 constituency report for congressional districts,  
21 core constituency report for house districts and  
22 core constituency report for senate districts  
23 under Act 43 for the house and senate districts  
24 and under Act 44 for the congressional districts.  
25 The data that I'm referring to on core

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1 constituency movement of populations, minority and  
2 non-minority, from old districts into new  
3 districts is located on Page 1 of 6 of the core  
4 constituencies report Senate Districts Act 43, and  
5 it references Senate Districts 3 and -- I'm sorry.  
6 Senate Districts 4 and 6 and indicates, for  
7 example, that old District 4 has a certain  
8 proportion of -- a certain number of people in a  
9 certain proportion that are in fact now in new  
10 District 4 so that new District 4 is 172,425 of  
11 which 133,708 come from old District 4 and others  
12 come from other districts. Senate District 6 --  
13 that's total population we're talking about.  
14 Similarly, Senate District 6 shows a total  
15 population of 172,292 under Act 43 and indicates  
16 that certain proportions of that come from old and  
17 new districts so that 101,789 of the black voters  
18 within present Senate District 6 that is under  
19 Act 43 come from old Senate District 6 that is  
20 under the 2002 plan, the plan used in 2002, and  
21 that's 101,789. Let me see if I've got -- these  
22 numbers don't quite match up.  
23 Q That's what I was wondering too. Can we take it a  
24 step at a time?  
25 A Yes.

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1 Q Let's talk about S4 first.  
2 MR. HODAN: Before we do, before  
3 you were getting into this, it occurred to me  
4 that there was one additional document that I  
5 left up in my office that relates to this  
6 topic that we should mark as an exhibit.  
7 MR. POLAND: Are there any others  
8 or this is it?  
9 MR. HODAN: This is it.  
10 MR. POLAND: Let's go ahead and  
11 mark this as an exhibit.  
12 MR. EARLE: We're going to run into  
13 the same problem. Oh, he's got one.  
14 MR. POLAND: He's got one. Let's  
15 mark his.  
16 (Exhibit No. 141 marked for  
17 identification)  
18 Q Just for the record, Mr. Hodan has handed us and  
19 we have now marked as Exhibit 141, a single sheet  
20 that Mr. Hodan said was up in his office. He  
21 brought it down to us.  
22 Professor Grofman, would you please look at  
23 Exhibit 141 that's in front of you.  
24 A Yes. Exactly.  
25 Q Can you identify Exhibit 141 for me.

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1 A Yes. This is an exhibit that basically shows the  
2 arithmetic calculations that I performed. So here  
3 I have to double-check to see where these numbers  
4 are coming from.  
5 Q Hold on one second. Before you do that, I want to  
6 ask you just a couple of questions about  
7 Exhibit 141.  
8 A Sure.  
9 Q Is Exhibit 141 a document that you prepared?  
10 A Yes, it is.  
11 Q When did you prepare Exhibit 141?  
12 A Sometime in -- it's difficult for me to judge from  
13 my time sheet, but I believe that that document  
14 would have been prepared sometime in December.  
15 Q Are there any other documents that you prepared  
16 that show calculations that have not been provided  
17 to us today?  
18 MR. HODAN: Counsel, I'll represent  
19 not that I'm aware. This was my mistake.  
20 MR. POLAND: It was left out of the  
21 production is what you're saying?  
22 MR. HODAN: Yes. As you noticed, I  
23 had it brought in before you even began that  
24 testimony so the record is clear.  
25 A Yes. This simply is -- just, again, for the

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1 record, this simply is an arithmetic tabulation of  
2 data at least to the best of my knowledge that is  
3 found in the core constituencies report. For  
4 example, the figure of 94,109 that is in Column  
5 Three under from Old S4 Into New S4 is located on  
6 the Diez core constituencies report Senate  
7 District 4. That number, 94,109, is located under  
8 the column that is labeled Black Under Act 43 Plan  
9 Senate District Number 4. Old District 4 is the  
10 row heading, and, if you go and intersect under  
11 Act 43 Plan Senate District Number 4 Old District  
12 Four row heading and column heading Black, you  
13 will discover the value of 94,109.  
14 Q I'm going to stop you there just a second. I know  
15 that you're a professor and a teacher and I  
16 appreciate that. As a pupil here I want to make  
17 sure that I'm understanding how you're walking  
18 through this calculation. Focusing here on Senate  
19 District 4, I'm triangulating between three  
20 different documents I have in front of me. I have  
21 the Diez report, and we're looking at the specific  
22 page, the core constituencies report, I now have  
23 Exhibit 141 which is the calculations and then I  
24 also have your report.  
25 A Yes.

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1 Q And we're looking at Paragraph 9(a).  
2 A Yes.  
3 Q So I would like to look first here at the  
4 statement in Paragraph 9(a) of your report. You  
5 have a calculation -- this is in parentheses. You  
6 have, "Equals 103,442 divided by 106,617" and then  
7 goes on from there. We will talk about that in  
8 just a minute. Can you tell me where the 103,442  
9 number came from.  
10 A Yes. That number is located on Exhibit No. 141.  
11 It is the fourth row on Exhibit 141 in the third  
12 column on Exhibit No. 141. It consists of the  
13 addition of two numbers, 94,109, that number being  
14 located on the Diez exhibit under Core  
15 Constituencies Report Senate Districts Act 43 in  
16 the subsection labeled Act 43 Plan Senate District  
17 No. 4 in the row that is labeled Old District 4 in  
18 the column that is labeled Black. The  
19 intersection of that row and that column is the  
20 number 94,109. That 94,109 indicates the black  
21 population in new District 4 where new District 4  
22 has a given black population, that proportion that  
23 comes from old District 4. In addition, a portion  
24 of old District 4 is located in new District 6.  
25 And we see on the page of the Diez core

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1 constituencies report Senate Districts Act 43 in  
2 the subsection that is labeled Act 43 Plan Senate  
3 District No. 6 that old District 4 is now -- the  
4 intersection of old District 4 and the column that  
5 is labeled Black is a cell that has 9,333 voters  
6 in it. That cell represents the number of African  
7 American/black voters who are now located in  
8 District No. 6 who were previously located in  
9 District 4. Similarly, other numbers are  
10 calculated in this way by finding the  
11 intersections of the relevant rows and the  
12 relevant columns where the relevant column is  
13 going to be in this case for African American  
14 population Black as the relevant column.  
15 To continue -- I have to double-check myself.  
16 Sorry. The number 103,442 is the sum of 94,109  
17 and 9,333. If we look at the sum of those over  
18 the old District 4 and old District 6 populations,  
19 which are different than the new District 4 and  
20 the new District 6 populations, the denominator  
21 would be African American population in old  
22 District 4, and, similarly, African American  
23 population in old District 6. And so what we find  
24 is that if we look at the black population from  
25 old District 4 or old District 6 which is moved

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1 into either new District 4 or new District 6, that  
 2 black population constitutes a fraction which is  
 3 equal to 98.4 percent of the population that was  
 4 previously African American population located in  
 5 either old District 4 or old District 6, the  
 6 numbers referring to senate districts.  
 7 Q Now, in Mr. Diez's report he weighs out his core  
 8 constituencies reports for total population, white  
 9 population, black population and Hispanic  
 10 population, correct?  
 11 A Yes. That's correct.  
 12 Q Did you perform a similar set of calculations for  
 13 any of the other populations that are portrayed in  
 14 Mr. Diez's report?  
 15 A If you will give me a moment to peruse.  
 16 MR. HODAN: I'm going to object to  
 17 form.  
 18 You can go ahead and answer.  
 19 A I'm just trying to check. I do not believe that I  
 20 have done a similar analysis of Hispanic  
 21 population movement between senate districts  
 22 because there is no relevant Hispanic population  
 23 movement between senate districts because the  
 24 Hispanic population is contained within a single  
 25 senate district.

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1 Q Is there also a core constituencies report that  
 2 Mr. Diez provides for house districts?  
 3 A Yes, there is.  
 4 Q And that contains information on total population,  
 5 white population, black population, Hispanic  
 6 population, correct?  
 7 A Yes, it does.  
 8 Q And so did you use those data to perform similar  
 9 calculations?  
 10 A I did not do similar analyses at the level of  
 11 assembly districts. If you give me just one  
 12 moment. No. That data could be reconstructed,  
 13 but I did not do so.  
 14 Q I'm just asking the question. Moving on in your  
 15 report, I would like you to look at Paragraph 10  
 16 of your report. You have a reference to the  
 17 *Thornburg v. Gingles* case, correct?  
 18 A Yes.  
 19 Q And you identify three prongs of -- we'll call it  
 20 the *Thornburg* or the *Gingles* case. Either way you  
 21 will know what I'm referring to?  
 22 A Yes.  
 23 Q You identify three prongs of the *Gingles* decision  
 24 in a Section 2 claim under the Voting Rights Act,  
 25 correct?

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1 A Yes.  
 2 Q Is it true that under the *Gingles* case the court  
 3 expressly rejected all of the factors why minority  
 4 or white voters might vote one way or another  
 5 other than because of race?  
 6 MR. HODAN: Objection, calls for a  
 7 legal conclusion.  
 8 Subject to that you can answer.  
 9 A This is a matter for dispute. I have a personal  
 10 view on this matter, but my personal view is not  
 11 that of a judge.  
 12 Q What is your personal view on the matter?  
 13 A My personal view is that the combination of the  
 14 plurality opinion and other opinions in the case  
 15 suggest that the relevant consideration in a  
 16 *Thornburg v. Gingles* Section 2 analysis is the  
 17 actual voting behavior of minority individuals  
 18 rather than attempts to reconstruct in some  
 19 fashion what their intent might have been.  
 20 Q But to look at the claim under Section 2 we look  
 21 at the race of the voters as opposed to other  
 22 attributes; isn't that correct?  
 23 A We look at the race of the voter and whether or  
 24 not the candidate is a candidate of choice of a  
 25 given racial minority community or in some cases a

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1 given combination depending on the nature of the  
 2 Section 2 claim.  
 3 Q So in a *Gingles* analysis, for example, political  
 4 affiliation or partisan affiliation doesn't come  
 5 into play. Is that fair to say?  
 6 A Yes and no. Once again, you're asking me to move  
 7 into matters that are really matters of legal  
 8 opinion. The supreme court on these matters has  
 9 been, shall we say, somewhat murky. If one looks  
 10 looking as a non-lawyer who is familiar with the  
 11 case law, the court has in cases that stem from  
 12 *Shaw v. Reno* looked not at the case of whether or  
 13 not partisanship was a motive of the individual  
 14 voter but at a somewhat different but also  
 15 intent-related question to the extent to which  
 16 partisanship could account for patterns that were  
 17 found in the way in which constituency lines were  
 18 drawn as opposed to race.  
 19 Q Moving down to the next paragraph, 11, you state,  
 20 "The best evidence on patterns of legally  
 21 significant racially polarized voting in a  
 22 jurisdiction is evidence taken from elections of  
 23 the types under challenge." Do you see that  
 24 statement?  
 25 A Yes.

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1 Q And then you have a reference to best evidence, in  
2 this particular case in the legislative districts  
3 that you're looking at, is from partisan contests  
4 for the assembly and senate and party primaries  
5 therein, and, B, voting behavior in the city of  
6 Milwaukee and Milwaukee County where potential  
7 African American or Hispanic assembly seats could  
8 be drawn. Do you see that?  
9 A Yes.  
10 Q You characterize that as best evidence, correct?  
11 A Yes.  
12 Q According to whom is that the best evidence?  
13 A I think that would be fair to say that that would  
14 be regarded as the best evidence by all or at  
15 least all of the experts with whom I am familiar  
16 who have repeatedly testified about voting rights  
17 issues. It is also the view that's been expressed  
18 by various courts including the *Gingles* court in  
19 response to testimony by myself and others. It is  
20 something which in my own published research, not  
21 connected to any given case, I have indicated and  
22 others who are co-authors of mine, such as  
23 Lisa Handley and Richard Niemi, have indicated as  
24 the best evidence. It is based on the political  
25 science judgment that there are substantial and

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1 important differences between contests for one  
2 type of office as opposed to another type of  
3 office in terms of ones ability to assess or  
4 predict the voting behavior of populations,  
5 including minority populations, that a critical  
6 difference between types of elections is whether  
7 or not those elections are partisan or  
8 non-partisan. But even within categories of  
9 elections that fall within partisan elections or  
10 categories of elections that fall within  
11 non-partisan elections, there may well be very  
12 relevant distinctions in terms of using evidence  
13 from outcomes and patterns of inferred voting  
14 behavior on the basis of race, racial  
15 characteristics of potential voters, to the  
16 prediction of the voting behavior of voters in  
17 cases involving elections of a very different  
18 sort. If you wish -- I tried to give you a short  
19 answer. If you wish, I could give you a longer  
20 one.  
21 Q What I wanted to ask you is you mentioned the  
22 *Gingles* opinion as being a case where courts  
23 accepted this is the best evidence; is that  
24 correct?  
25 A Yes.

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1 Q What other cases can you identify where courts  
2 have accepted the best evidence as being the  
3 evidence you have identified in Paragraph 11?  
4 A Probably the answer to that would be certainly  
5 every case in which I have testified. That would  
6 probably in terms of -- *Gingles* is an African  
7 American case. *Garza v. Los Angeles County* would  
8 be another case where this argument was made both  
9 by myself and by the other expert that if you are  
10 going to make inferences about the voting behavior  
11 of minorities, the best evidence is evidence in  
12 the type of district which is at issue, and, in  
13 the event that you do not have an adequate number  
14 of elections to look at in the type of district  
15 which is at issue, and I had previously indicated  
16 that in my view that would be a minimum of three,  
17 that in such circumstances it may be appropriate  
18 to look at exogenous contests; that is, situations  
19 where one does not actually have data for the  
20 particular type of elections that are at issue and  
21 the particular populations would be voting in  
22 those elections. And, if one does rely on  
23 exogenous elections, that is elections not within  
24 the district and not for the type that is at issue  
25 in the voting rights case, that those exogenous

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1 contests also should be evaluated with respect to  
2 the extent that they are elections which are  
3 similar in nature to the elections which are at  
4 issue in the case and the extent to which the  
5 populations from whom inferences are being drawn  
6 are in fact populations who can be regarded as  
7 similar to or in fact identical to the populations  
8 which are at issue in the case that is where the  
9 voting rights challenge has been brought.  
10 Q So an exogenous race would be a race outside of  
11 the areas at issue, correct?  
12 A An exogenous race would be a race either outside  
13 the area or not for the type of election which is  
14 at issue.  
15 Q And when you say not for the type of election,  
16 what do you mean?  
17 A An assembly district election is an assembly  
18 district election. Elections either are or are  
19 not elections for the senate. For the assembly --  
20 a senate election is a senate election. Elections  
21 either are or are not elections for the senate.  
22 If one is going to move beyond -- any election  
23 that moves beyond those are exogenous to the  
24 extent that one moves beyond the elections that  
25 are for the immediate type of district of

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1 interest. In the area where that district has a  
2 voting rights claim, then you would move to most  
3 nearly comparable types of districts and most  
4 nearly comparable types of populations.  
5 Q Would you look at races that are occurring  
6 within -- different types of races occurring  
7 within the assembly districts that are at issue?  
8 A Only to the extent -- the answer to that question  
9 is yes and no. The no part is the more important  
10 part. The no part is that one would do so only to  
11 the extent that there was not adequate information  
12 provided that was best evidence. Only when there  
13 wasn't adequate best evidence would one then go  
14 beyond best evidence because once one goes beyond  
15 best evidence, then any type of evidence that one  
16 looks at has potential problems and indeed  
17 potentially severe problems in drawing inferences  
18 from whatever the results may be in those types of  
19 election or in those other kinds of constituencies  
20 to the actual elections taking place in the  
21 constituency at issue which are of the same type  
22 as the voting rights challenge is concerned with.  
23 Q Now, you rendered opinions that relate to Assembly  
24 Districts 8 and 9 in your report, correct?  
25 A Yes. That is correct.

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1 Q Did you look at all at any of the aldermanic  
2 elections that took place within Assembly  
3 Districts 8 and 9?  
4 A No, I did not.  
5 Q Why did you not?  
6 A The aldermanic elections to the best of my  
7 knowledge are elections which have two  
8 characteristics. A, they are not explicitly  
9 referenced in Dr. Mayer's initial report, and, B,  
10 they are non-partisan elections. It has been my  
11 testimony here and consistently that non-partisan  
12 elections pose particular problems for the  
13 election of minority candidates and that  
14 inferences drawn from non-partisan elections  
15 should be used only when there is no other kind of  
16 evidence that is available that can be relied upon  
17 to make inferences about the voting behavior of  
18 racial and ethnic/linguistic minority groups.  
19 Q You say non-partisan elections. Do you know  
20 whether any of the political parties provide  
21 support for candidates who are running for any of  
22 the elections within Assembly District 8 and 9  
23 whether they be aldermanic elections or elections  
24 for the legislature itself?  
25 A No. I have no knowledge about the behavior of

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1 political parties. The non-partisan  
2 characteristic refers not to the behavior of the  
3 parties but rather to the availability of a  
4 partisan label in terms of the candidates who are  
5 listed on the ballot.  
6 Q So your definition of non-partisan applies solely  
7 to the label of the candidate as it appears on the  
8 ballot?  
9 A Yes. That is correct.  
10 Q If a candidate would declare himself or herself to  
11 be of a particular political party publicly and  
12 get support from one of the political parties,  
13 that would not count as partisan?  
14 A That still would be a non-partisan election. The  
15 standard definition in political science has to do  
16 with the characteristics of the identification of  
17 the candidates with respect to party and whether  
18 or not there is a party label such that there  
19 would for any given party be only one candidate of  
20 that label in the general election.  
21 Q I would like to come back now to something we had  
22 been going over before. We have our copies back  
23 with us. I would like you to just have in front  
24 of you here --  
25 MR. POLAND: I guess these are all

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1 of them, correct? Is that correct? These  
2 were all of the exhibits that we marked from  
3 what was handed over this morning?  
4 MS. LAZAR: Yes.  
5 Q We're going to turn back in your report, Professor  
6 Grofman, to Paragraph Four which is I think where  
7 we had begun when we were talking about the data  
8 that were provided.  
9 MR. HODAN: Before we do that, why  
10 don't we take a lunch break. It's noon. The  
11 food is here.  
12 MR. POLAND: That's fine.  
13 MR. HODAN: Before we get into  
14 that.  
15 MR. POLAND: That's fine.  
16 (Recess)  
17 Q Professor Grofman, just before we broke for lunch  
18 we were going back to Paragraph Four in your  
19 report that's Exhibit 140.  
20 A Yes.  
21 Q I wanted to complete my questioning about the data  
22 that you considered in preparing Exhibit B. I  
23 believe you referred to Exhibits 130 and 135 in  
24 the previous testimony.  
25 A Give me some time to find my exhibits.

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1 Q Yes. Of course.  
 2 A 130, 135, 136. I believe that that data, Act 43  
 3 Legislative Districts Using 2010 Census Data,  
 4 indeed would be 130, 135 exhibits.  
 5 Q Did you use any other data other than those  
 6 contained in Exhibits 130 and 135 in preparing  
 7 Exhibit B?  
 8 A Not to the best of my knowledge.  
 9 Q I would like to draw your attention to Paragraph  
 10 Number Five then on Page 2 of your report. There  
 11 you refer to Exhibit C and state, "It shows racial  
 12 and Hispanic demographic data on population voting  
 13 age population characteristics of the court-drawn  
 14 2002 legislative districts using 2010 census  
 15 data." What data did you draw from to prepare  
 16 Exhibit C?  
 17 A I believe that is Exhibit 136.  
 18 Q Did you use any other data to prepare Exhibit C to  
 19 your report --  
 20 A I'm sorry. Let me be clear. Which one are we on?  
 21 We're on Five? So we're talking about the 2002  
 22 plan?  
 23 Q Correct. Using 2010 census data.  
 24 A I believe the answer to that one is Exhibit 136.  
 25 Q I'm sorry. You said 136?

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1 A 136.  
 2 Q Did you use data other than that contained in  
 3 Exhibit 136 to prepare Exhibit C to your report?  
 4 A Not to the best of my knowledge, no.  
 5 Q Then looking at Paragraph Number Six on Page 2 of  
 6 your report you refer to Exhibit D, correct?  
 7 A Yes.  
 8 Q What data did you use to prepare Exhibit D?  
 9 A Yes. Here, this is data provided by counsel, and  
 10 I believe that there is somewhere, and I apologize  
 11 for not being able to be more precise, an exhibit  
 12 that corresponds to the 2002 data that would be  
 13 from basically previous State reports.  
 14 Q When you say data from counsel -- you said  
 15 contained in a report? Did I hear that correctly?  
 16 A I --  
 17 MR. HODAN: No. You didn't hear  
 18 that correctly.  
 19 A I don't believe so. I believe I actually just got  
 20 these numbers.  
 21 Q Counsel provided the numbers in Exhibit D?  
 22 A Yes.  
 23 Q That's what you're saying?  
 24 A Yes.  
 25 Q Is that reflected in one of the E-mails that you

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1 produced to us today?  
 2 A The answer to --  
 3 Q Let me amend that. Let me restate that question.  
 4 Is that contained within either an E-mail or a  
 5 document attached to an E-mail that you produced  
 6 to us today?  
 7 A I think the answer to that is no. If there's a  
 8 problem with disclosure here, I apologize, but I  
 9 believe -- I'm sorry. My best recollection is  
 10 that some thing in the mounds of material that I  
 11 have been provided includes this information about  
 12 the 2002 plan and that in order to make sure that  
 13 I had the right numbers I asked counsel to provide  
 14 me the information specifically for the districts  
 15 that were in question.  
 16 Q Do you recall whether that would have been  
 17 anything contained in Professor Morrison's report?  
 18 A I honestly could not tell you the answer to that.  
 19 Q Let me just show you a copy of Professor  
 20 Morrison's report. I'm handing you a copy of  
 21 what's been marked as Exhibit 32. That's  
 22 Professor Morrison's report.  
 23 MR. EARLE: Do you need it?  
 24 MR. POLAND: I don't.  
 25 MR. EARLE: I have got one right

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1 here.  
 2 MR. HODAN: If you don't recall,  
 3 you don't recall. Don't guess.  
 4 A I don't recall and it does not appear -- it does  
 5 not appear -- let's just do a quick check. No.  
 6 As far as a quick skimming of this report this is  
 7 not the source.  
 8 Q All right. So sitting here right now you can't  
 9 point out to me specifically the document that  
 10 contains the information that counsel provided to  
 11 you that was used to prepare Exhibit D?  
 12 A Yes. That is correct.  
 13 Q If you are able to recall or identify that, the  
 14 source of that data, as we go through the  
 15 deposition, I would appreciate it if you would  
 16 identify that for me.  
 17 A Certainly.  
 18 Q Thank you. Now, in your expert report you discuss  
 19 the African American assembly and senate districts  
 20 within the city of Milwaukee, correct?  
 21 A Yes.  
 22 Q I would like you to turn to Page 4 of your report  
 23 in Paragraph D.  
 24 A Yes.  
 25 Q It is Paragraph 12(d) specifically.

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1 A Yes.  
 2 Q You are referring to Dr. Mayer's Rule 26 expert  
 3 report in Paragraph D, correct?  
 4 A Yes. That's correct.  
 5 Q You state there that Dr. Mayer's report misstates  
 6 the degree to which there is legally significant  
 7 racially polarized voting for African American  
 8 candidates in specific areas of Milwaukee County  
 9 at issue for possible voting rights violations,  
 10 primarily the city of Milwaukee, correct?  
 11 A Yes.  
 12 Q Did you yourself conduct any study of racially  
 13 polarized voting for African American candidates  
 14 in the specific areas of Milwaukee County at  
 15 issue?  
 16 A The answer to that is yes and no. The yes part is  
 17 the more important part because the analysis that  
 18 I conducted was reported in my declaration and it  
 19 had to do with the outcomes of elections that took  
 20 place in the African American districts in the  
 21 city of Milwaukee in those instances where there  
 22 was an African American candidate running in  
 23 either the primary or the general and that  
 24 analysis which is based on official election  
 25 returns in the state simply indicates the extent

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1 to which there was a contest involving an African  
 2 American candidate and whether or not the African  
 3 American candidate was the winner of that contest  
 4 and also in the way in which I prepared the  
 5 summary of those contests whether or not the  
 6 African American candidate was a unanimous winner  
 7 of the either primary or general election contest  
 8 that information does indeed bear and indeed in my  
 9 view directly bears on the levels of legally  
 10 significant racially polarized voting.  
 11 Q The elections that you considered, are they  
 12 identified in your expert report?  
 13 A They are identified essentially as all elections  
 14 involving African American candidates in the  
 15 districts in question; that would be AD 10, 11,  
 16 16, 17 and 18 and -- I don't remember the details  
 17 of AD 12. Let's say 10, 11, 16, 17, 18 and S4 and  
 18 S6. These would be elections involving African  
 19 American candidates repeatedly in both the primary  
 20 of the democratic party and the general election.  
 21 So there would be a number of these elections that  
 22 took place over the course of the previous decade;  
 23 2002, 2004, 2006, 2008 and 2010.  
 24 Q Pardon me. I didn't mean to interrupt your  
 25 answer. I note that you were looking at your

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1 report when you were answering that last question,  
 2 correct?  
 3 A Yes.  
 4 Q Can you identify for me where in your report you  
 5 were consulting when you were answering the  
 6 question.  
 7 A I was looking at the answers to be found on the  
 8 page to which we are presently referring; that is  
 9 Page 4 under numbered Section 12. And that would  
 10 be parts A, B -- Parts A and B. I would have to  
 11 have my own recollection refreshed as to Part C  
 12 vis-à-vis the existence on non-existence of  
 13 African American candidates in AD 12. I believe  
 14 that the winner in AD 12 of the democratic primary  
 15 has been in each and every instance a non-African  
 16 American candidate who has then gone on to win the  
 17 general election. And my belief is that though  
 18 there is some question for minor candidates about  
 19 their racial identification that the major  
 20 candidates in that district have been non-African  
 21 American.  
 22 Q Did you look solely at election results from races  
 23 in those particular assembly districts?  
 24 A Yes. That is correct. And the senate districts  
 25 as well.

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1 Q And the senate districts too. And of course the  
 2 senate districts include the assembly districts,  
 3 correct?  
 4 A Exactly.  
 5 Q I would like you to turn to Page 6 of your report  
 6 and draw your attention to Paragraph Number 14  
 7 first, 14(a). Look at the last sentence of  
 8 paragraph 14(a). You state, "Based on the  
 9 evidence in the numbered sections above, it is  
 10 apparent that under Act 43 Districts S4, S6,  
 11 AD 10, AD 11, AD 16, AD 17 and AD 18 clearly  
 12 provide African American voters with a realistic  
 13 opportunity to elect candidates of their choice  
 14 exactly as they have overwhelmingly done during  
 15 the previous decade." Do you see that?  
 16 A Yes.  
 17 Q Now, you use the percentages of voting age  
 18 population in part to reach that conclusion,  
 19 correct?  
 20 A I use the comparability of the voting age  
 21 populations in the 2002 and the 2011 plan combined  
 22 with the results over the five elections that took  
 23 place in each of these assembly districts over the  
 24 period from 2002 to 2010 to reach my conclusion,  
 25 yes.

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1 Q If we look in the next paragraph down, Paragraph  
2 B, you state, "Under Act 43 AD 12, which has now  
3 become for the first time a black voting age  
4 majority district, provides a realistic  
5 opportunity for the success of a candidate of  
6 choice of the African American than did AD 12 as  
7 drawn in the 2002 court-drawn plan when it had  
8 only 32.77 percent African American voting age  
9 population based on 2000 census data." Do you see  
10 that?  
11 A Yes.  
12 Q I would like you to open your report to Exhibit B,  
13 please.  
14 A Yes.  
15 Q You're there. That sets forth the percentage of  
16 the voting age population, various voting age  
17 populations, under Act 43, correct?  
18 A Yes.  
19 Q This is the 2010 census data, correct?  
20 A Yes.  
21 Q So in Assembly District 10 the black voting age  
22 population is 61.79 percent, correct?  
23 A Yes.  
24 Q If we follow that on down, the column Assembly  
25 District 11, 61.94 percent black voting age

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1 population, correct?  
2 A Yes.  
3 Q And then 12 is 51.40 percent, correct?  
4 A Yes.  
5 Q 16 is 61.34 percent, correct?  
6 A Yes.  
7 Q 17 is 61.33 percent, correct?  
8 A Yes.  
9 Q And then 18 is 60.43 percent, correct?  
10 A Yes.  
11 Q It's your opinion that in each of these districts  
12 there is sufficient black voting age population to  
13 elect a candidate of choice of the minority  
14 community?  
15 A It is my opinion that there is sufficient  
16 population to create a realistic opportunity to  
17 elect such candidates, yes.  
18 Q And that holds true in Assembly District 12 even  
19 though it's a 51.48 percent black voting age  
20 population?  
21 A No. As stated in numbered paragraph -- sorry  
22 lettered Paragraph Subsection B of numbered  
23 Paragraph 14 in the section which you previously  
24 had me read, "Moreover under Act 43 AD 12 has now  
25 become for the first time a black voting age

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1 majority district provides a more realistic  
2 opportunity for success of a candidate of choice  
3 than did AD 12 as drawn in 2002."  
4 Q You're distinguishing then between the percentage  
5 of black voting age population in Assembly  
6 District 12 versus the black voting age population  
7 in the other assembly districts portrayed in  
8 Exhibit B; is that correct?  
9 A I am. That's correct.  
10 Q I note that the other assembly districts, that  
11 would be 10, 11, 16, 17, and 18, you identify  
12 as -- the lowest of those I think in terms of the  
13 black voting age population is 60.43 percent in  
14 Assembly District 18, correct?  
15 A Yes.  
16 Q Is it fair to say then that there is someplace  
17 within that range, 51.48 and 64.43 percent, where  
18 you believe there is a distinction to be made  
19 between the ability or the realistic opportunity  
20 of a candidate of choice to be elected by the  
21 minority population of the district?  
22 A In Milwaukee my testimony would be that while I  
23 have not reached an opinion as to what the lowest  
24 level of minority population sufficient for an  
25 opportunity equal to that of non-African Americans

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1 to be elected would be that a number like  
2 55 percent would essentially guarantee such an  
3 equal opportunity to be elected.  
4 Q Does that hold true solely for the African  
5 American districts?  
6 A That number is for the African American districts,  
7 yes.  
8 Q Have you set that conclusion out in your report?  
9 A That conclusion was reached in my previous report.  
10 It was not set out in this report. In this report  
11 I did not reach a specific conclusion about the  
12 opportunity of African Americans to elect a  
13 candidate of choice in AD 12 because this was a  
14 rebuttal report and there was not a claim made to  
15 the best of my knowledge that AD 12 was not a  
16 district which would elect a candidate of choice  
17 of the African American community in any expert  
18 witness report that I reviewed.  
19 Q Have you done anything since 2002 to examine the  
20 African American districts in Milwaukee to  
21 determine whether that 55 percent number you  
22 expressed in 2002 could be or should be changed?  
23 A The only analysis that I performed are analyses of  
24 electability and the electability is in districts  
25 which were drawn with under the 2002 plan where

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1 the -- if you give me a moment to find the exact  
2 numbers.  
3 MR. HODAN: Exhibit D.  
4 A Exhibit D where you will see with the notable  
5 exception of Assembly District 12 the minimal  
6 population in these African American majority  
7 assembly districts was a black voting age  
8 population of 56.7 percent and the maximum was a  
9 67.08 percent figure. In the absence of racially  
10 polarized voting analyses, I have no new  
11 information that would cause me to change my  
12 opinion from that which was expressed in 2000 or  
13 2002.  
14 Q And the racially polarized voting analysis is  
15 something you haven't done for the purpose of this  
16 particular report in this case?  
17 A That is correct. This is a rebuttal report to  
18 testimony that was provided by others.  
19 Q And it was your testimony in 2002 that, looking  
20 still at Exhibit D, that in Assembly District 18  
21 that the 56.7 percent black voting age population  
22 was sufficient to provide voters in that district  
23 a realistic opportunity to elect candidates of  
24 their choice?  
25 A Yes. That is correct. My testimony was that a

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1 55 percent number would in fact be sufficient.  
2 Q Now, if we turn back to Exhibit B, it appears then  
3 that Assembly Districts 10, 11, 16, 17 and 18 are  
4 potentially overpopulated with black voting age  
5 population by 5 or 6 percent more than what would  
6 be necessary in your opinion to elect candidates  
7 of choice from the African American community; is  
8 that correct?  
9 A Yes. That is correct.  
10 Q So it is possible that some members of those  
11 communities, some portion of those communities,  
12 could have been moved, I don't mean physically  
13 moved I mean redistricted, such that another  
14 district could have contained a larger proportion  
15 or percentage of black voting age population; is  
16 that correct?  
17 A Yes. That is correct.  
18 Q Did you do anything to determine whether a seventh  
19 African American district, majority district,  
20 could be created?  
21 A Yes. I reviewed the analysis in Dr. Mayer's  
22 report. That analysis indicated that in his view  
23 a seventh district could not be created. I  
24 independently looked at the information contained  
25 in the census data for the 2010 populations in

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1 districts that were proximate to the African  
2 American district and the numbers that one would  
3 get if one subtracted from the 55 the existing  
4 African American populations in AD 10, 11, 16, 17,  
5 and 18 those portions of those districts -- I'm  
6 sorry -- the African American portions of those  
7 districts in excess of a population of 55 percent  
8 and concluded that it was essentially  
9 mathematically and geographically impossible,  
10 given the racial demography and geography, to draw  
11 a seventh African American district.  
12 Q I would like you to take a look at Paragraph 15 of  
13 your report on Page 7. Are you there?  
14 A Yes.  
15 Q The laptop screen is in my way. I just can't see.  
16 A On Page 7?  
17 Q Yes. And that contains the discussion in  
18 Dr. Mayer's report --  
19 A Yes.  
20 Q -- to which you're referring? And there's a  
21 sentence that you set out there that you're  
22 quoting from Dr. Mayer's report. "'The numbers  
23 are not large enough to create a seventh  
24 majority-minority African American assembly  
25 district,' i.e., a district above and beyond the

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1 six majority black VAP assembly districts that  
2 already exist." Do you see that?  
3 A Yes.  
4 Q And that's the statement in Dr. Mayer's report  
5 that you're referring to?  
6 A Yes.  
7 Q And your belief is that Dr. Mayer is opining there  
8 that there is not a large enough African American  
9 population to create a seventh majority African  
10 American district?  
11 A That is exactly what Dr. Mayer says there, yes.  
12 Q I'm going to hand you a copy of what's previously  
13 been marked as Exhibit 55 which is Dr. Mayer's  
14 report. Can you identify for me, please, where  
15 that statement is made in Dr. Mayer's report.  
16 I'll ask you to turn to Page 25 of Dr. Mayer's  
17 report to make it faster.  
18 A "Even if the numbers are not large enough to  
19 create a seventh majority-minority African  
20 American assembly district."  
21 Q Now, the full sentence in Dr. Mayer's report  
22 states, "These redistributed voters could enhance  
23 the influence of African Americans in other  
24 districts even if the numbers are not large enough  
25 to create a seventh majority-minority African

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1 American assembly district."  
 2 A Yes. That is correct.  
 3 Q And your interpretation of that is that Dr. Mayer  
 4 was stating the affirmative opinion that a seventh  
 5 majority African American assembly district could  
 6 not created?  
 7 A It is my view that that is indeed what he was  
 8 stating, and, regardless of whether or not it is  
 9 in fact what he was stating, it is my view that in  
 10 fact such a district cannot be created.  
 11 Q Did you read Dr. Mayer's deposition?  
 12 A Yes.  
 13 Q Did you read his testimony regarding that subject?  
 14 A I did, though the details of it I certainly could  
 15 not recollect without my memory being refreshed.  
 16 Q Well, Dr. Mayer said what he said about that  
 17 topic. I think we can agree on that. Is that  
 18 fair?  
 19 MR. HODAN: Object to form.  
 20 He said what about what?  
 21 MR. POLAND: He said what he said  
 22 in his deposition.  
 23 MR. HODAN: Well, I'll stipulate  
 24 that what he said in his deposition is what  
 25 he said.

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1 Q Regardless of what your interpretation is of what  
 2 he said on the ability to create a seventh  
 3 majority African American district.  
 4 A Yes. Regardless of what Dr. Mayer might or might  
 5 not have intended by perhaps ambiguous language in  
 6 one or more of the documents that he prepared, my  
 7 own view is that it is not possible to create a  
 8 seventh African American majority district based  
 9 on my own independent analyses.  
 10 Q All right. In your own independent analysis did  
 11 you do any analysis of voter turnout?  
 12 A No, I did not.  
 13 Q Is voter turnout something that's important to  
 14 consider when looking at the creation of  
 15 majority-minority districts?  
 16 A Yes.  
 17 Q Do you know any of the characteristics of the  
 18 white population that lives within the area  
 19 surrounding the majority African American  
 20 districts in Milwaukee?  
 21 A No, I do not.  
 22 Q That's nothing that you looked at for the purpose  
 23 of creating this report; is that correct?  
 24 A That is correct.  
 25 Q Are there any other characteristics of populations

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1 that are important to look at when you are  
 2 determining whether a majority-minority district  
 3 can be created?  
 4 A Yes. One characteristic of the population that  
 5 would be relevant is whether or not there are  
 6 minorities other than the minority group whose  
 7 voting rights claim is being addressed who might  
 8 also be found present in the district.  
 9 Q Are there any other characteristics of the  
 10 population that are important to look at when  
 11 determining whether a majority-minority district  
 12 can be created?  
 13 A Another issue that might matter would in fact --  
 14 for Latino districts would in fact be the  
 15 citizenship characteristics of the district  
 16 because that would affect the availability of  
 17 voters so that citizenship would certainly be the  
 18 matter which if available and accurately estimated  
 19 would indeed be relevant.  
 20 Q Citizenship is not something that you looked at in  
 21 the Latino districts for your study in your  
 22 rebuttal report, correct?  
 23 A As I previously stated, I did not conduct  
 24 independent analyses of citizenship voting age  
 25 population in the Latino districts or anywhere

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1 else for that matter. I did, however, review the  
 2 materials in Dr. Mayer's report and I also, and  
 3 here I accept the correction in terms of my  
 4 memory, looked briefly at the report of  
 5 Dr. Morrison which also addresses citizen voting  
 6 age population matters. And, again, just to  
 7 correct the record or to indicate the record was  
 8 correct as stated, the only reference to  
 9 Dr. Morrison's report that I give here is not in  
 10 terms of citizen voting age population numbers but  
 11 in terms of voting age population numbers.  
 12 Q And you did not prepare any exhibits to your  
 13 expert report that set out citizen voting age  
 14 populations in the Latino districts, did you?  
 15 A That is correct.  
 16 Q You have prepared other studies of voting in  
 17 majority-minority districts where you did consider  
 18 citizenship, correct?  
 19 A Yes, I have.  
 20 Q You have done that several times, haven't you?  
 21 A Yes. That's also correct.  
 22 Q Why did you decide not to use citizenship in  
 23 performing your analyses in this case?  
 24 A There are essentially two reasons. The first  
 25 reason is that Dr. Mayer already provides a

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1 citizen voting age population calculation in his  
2 declaration. In that declaration he indicates  
3 that his estimate at the time was of a citizen  
4 voting age population in the largest of the Latino  
5 districts of 49.6 percent citizen voting age  
6 population. The second reason has to do with my  
7 understanding and the factual situation concerning  
8 the bases of citizen voting age population  
9 estimates. In the past it was the case that  
10 citizen voting age population estimates were  
11 derived from the so-called long form of the  
12 census. The long form of the census was given to  
13 approximately, or, actually not approximately --  
14 it was given to one citizen or actually one person  
15 in six. It was only on the long form that a  
16 question about citizenship was asked. The  
17 consequence of that plus the delay in having  
18 citizen voting age population data from the long  
19 form available was that most redistrictings in the  
20 United States took place without the advantage of  
21 having reliable citizen voting age population  
22 data. The change that has taken place in the way  
23 in which citizen voting age population data is  
24 collected by the census is a fairly dramatic  
25 change which affects the potential reliability of

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1 citizenship voting age population data in  
2 particular in its application to units of  
3 geography that are smaller than the county level.  
4 I indicated that I might, depending on the  
5 nature of the questions you asked, have a document  
6 that I would reference. I would like to reference  
7 a document by Nathan Persily, P-e-r-s-i-l-y, in  
8 the Cardozo Law Review. I apologize because I  
9 cannot give you a precise title and citation to  
10 this. I didn't bring with me that.  
11 MR. EARLE: Off the record.  
12 (Discussion off the record)  
13 Q Let me just lead into it.  
14 A Of course.  
15 Q Professor, you were just discussing an article by  
16 Nathan Persily; is that correct?  
17 A Yes.  
18 Q Would you identify that, please.  
19 A This is an article that appeared in Cardozo Law  
20 Review rather recently. I apologize that I don't  
21 have an exact citation to it. I forgot to bring  
22 it with me. I found it basically on Lexis by  
23 looking at Persily. Persily I think is actually  
24 how he pronounces his name. And I typed in  
25 Persily and I typed in Cardozo Law Review and then

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1 I found this reference.  
2 Q That's a document you brought with you today?  
3 A No. I don't have a full copy. I only brought the  
4 excerpt that I intend to rely upon.  
5 Q I would like to try to find that within the  
6 materials that you brought with you today. Was  
7 that one of the -- hold onto it just a second  
8 because we might have a copy of that. Is that  
9 located within the folder, the materials that were  
10 in your green folders?  
11 A Yes.  
12 MR. EARLE: I don't find it.  
13 A I think. Maybe I'm wrong about that.  
14 MR. EARLE: It's not within the  
15 materials that we copied.  
16 MR. POLAND: Why don't we go off  
17 the record.  
18 (Discussion off the record)  
19 (Exhibit No. 142 marked for  
20 identification)  
21 Q Professor Grofman, you were just testifying before  
22 the break about an article that you had located,  
23 and we have marked that as Exhibit 142 and put it  
24 in front of you now.  
25 A Yes.

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1 Q I'm going to ask you what it is about this article  
2 by Nathan Persily in the Cardozo Law Review that  
3 caught your eye or made you believe that it's  
4 relevant to the opinions that you have expressed  
5 in this case.  
6 A The article by Nathan Persily is relevant only  
7 because it provides factual documentation in a  
8 source not connected with any litigation of  
9 certain statements I am going to make and would  
10 have made anyway about the characteristics of  
11 assessments of citizen voting age population and  
12 the differences in such assessments under the  
13 current census regime as compared to under census  
14 regimes in the past.  
15 Q And the census regime in the past was, you  
16 referred to before, up until 2000 and including  
17 2000 the long form of the census was used,  
18 correct?  
19 A That is correct.  
20 Q That collected citizenship data, correct?  
21 A Yes.  
22 Q The 2010 census did not collect citizenship data,  
23 correct?  
24 A The 2010 census did not -- neither earlier  
25 censuses nor the present short form of the census

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1 collect citizen data. The difference is that in  
2 the past the long form of the data which was  
3 administered to a sample of the population of one  
4 in six did in fact collect citizen data. The long  
5 form has been essentially discontinued in the 2010  
6 census and has been replaced in effect by the  
7 American Community Survey.

8 I was intending to provide if asked testimony  
9 about the nature of the changes in citizen voting  
10 age population and the implications for the -- I  
11 was intending to provide evidence about the way in  
12 which the census collects citizen voting age  
13 population data and the relevance of that change  
14 for the kinds of estimates that might be done in  
15 this case of citizen voting age population. And,  
16 in order to essentially expedite the process of  
17 the deposition, rather than have me give  
18 statements based on my own knowledge about changes  
19 in the census form, I simply am providing for  
20 factual purposes only a statement in a law review  
21 by a noted law professor who is a specialist on  
22 election law that simply enumerates the changes in  
23 the census that have taken place in the last  
24 decade. I use this document only for factual  
25 purposes. I do not claim nor do I necessarily

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1 agree with all of the matters of interpretation or  
2 argument that are found here, but I'm simply  
3 reporting in a way that provides a convenient  
4 source information. If you like -- if you wish, I  
5 will continue to indicate the specific content on  
6 these two pages that is relevant to my opinions.

7 Q When did the Persily Cardozo Law Review article  
8 appear?

9 A Sometime very recently. Well, before the period  
10 of which my testimony was -- my declaration was  
11 prepared.

12 Q In any event, this is obviously an article we will  
13 be able to obtain and we can see the date from it.  
14 You say you are relying on Exhibit 142 solely for  
15 the factual --

16 A Yes.

17 Q -- information it contains; is that correct?

18 A Yes. That is correct.

19 Q I do note that there are some markings on  
20 Exhibit 142 in the left margin.

21 A Right.

22 Q Are those your markings?

23 A Those are intended to be paragraphs or sentences  
24 that I wish to call particular attention to  
25 because they deal with facts. For example,

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1 beginning on the first paragraph on the  
2 non-numbered first page there's a sentence that  
3 begins, "The decennial census and the  
4 redistricting data set produced from it do not  
5 include citizenship numbers." And then that  
6 material continues, "The only source for such data  
7 is the American Community Survey," et cetera. And  
8 then it continues, "Indeed, the census will not  
9 even release ACS citizenship estimates at the  
10 block level." And then it continues, "One-year  
11 estimates will be released only for units of  
12 population in excess of 65,000 people." And then  
13 it continues, "Beginning in January 2011, three-  
14 and five-year averages will also be available at  
15 the census tract and block group level." But "ACS  
16 estimates," I'm continuing, "come with a margin of  
17 error, indicating, for example, the number of  
18 Latino citizens in a given tract is somewhere  
19 between 900 and 1,100. For purposes of  
20 one-person, one-vote or even one-citizen,  
21 one-vote, therefore, the only relevant citizenship  
22 data available from the census is ballpark  
23 figures, at best, and misleading and confusing  
24 estimates at worst." And then goes on to say --

25 Q Actually, can I stop you there?

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1 A Please.

2 Q There's a reference to beginning January 2011. Do  
3 you see that?

4 A Yes.

5 Q Does that indicate to you that this article came  
6 out before January 2011?

7 A I believe so, yes.

8 Q Do you know whether --

9 A Or it was written before January 2011. When its  
10 date of publication is is another matter.

11 Q Fair point. Do you know whether Nathan Persily  
12 has since this time, since the time that three-  
13 and five-year averages were available -- strike  
14 the question. Since the time that three- and  
15 five-year averages have become available, do you  
16 know whether Nathan Persily has written anything  
17 that evaluates that data and its appropriateness  
18 to gauge citizenship numbers?

19 A I am not aware of any such publication or any such  
20 report. That does not mean it does not exist.  
21 I'm simply saying I'm not aware of it.

22 Q Have you ever used the American Community Survey  
23 data to make estimates of citizen voting age  
24 population in minority communities?

25 A No, I have not.

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1 Q Please continue on to the next factual statement  
2 that you were going to refer to.  
3 A Exactly. Here I think -- well, the next  
4 statement -- actually, the statement I just read,  
5 "For purposes of one-person, one vote or even  
6 one-citizen, one vote. Therefore the only  
7 relevant citizenship data available from the  
8 census give ballpark figures at best and  
9 misleading and confusing estimates at worst" --  
10 here that might also be expressing an opinion as  
11 well as a factual statement. It also happens to  
12 be an opinion which I share because the problem  
13 is, as indicated in the sentence immediately  
14 above, these are, A, estimates, and, B, based on a  
15 very small subset, 2.5 percent of the population,  
16 as compared to the one in six roughly 17 percent  
17 of the population that was used for the previous  
18 long form.  
19 And then if I can continue to read into the  
20 record the relevant factual assessments --  
21 Q I will let you do that in just a minute. I want  
22 to ask you a follow-up on that as well.  
23 A Sure.  
24 Q Do you know whether any of the other experts other  
25 than Dr. Mayer have used American Community Survey

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1 data for the purpose of assessing citizen voting  
2 age population?  
3 A I am not sure of that. I deliberately did not --  
4 I chose not to attempt to provide my own estimates  
5 of citizenship voting age population data because  
6 of the problems that I perceive with citizen  
7 voting age population estimates, and, also, as I  
8 indicated in an earlier answer to your question,  
9 because the estimates that are already provided by  
10 Dr. Mayer essentially give ballpark estimates and  
11 the number that he came up with for the District 8  
12 is 49.6 percent, which, treated as a ballpark  
13 estimate, seems perhaps not too far from what  
14 might be accurate.  
15 Q So your opinion then is that it is better not to  
16 use citizen voting age population data if it's  
17 taken from the American Community Survey than not  
18 to use it at all?  
19 A No. My opinion is that any data that is taken to  
20 estimate citizen voting age population is to be  
21 taken as an estimate and it is an estimate that is  
22 less reliable than estimates that were done using  
23 long survey data in the past and that a sensible  
24 way to interpret those estimates are, to use  
25 Professor Persily's terms, ballpark estimates

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1 rather than essentially extremely precise  
2 estimates of citizenship voting age population.  
3 Q It doesn't make those estimates invalid, does it?  
4 A No. It means that those -- it does not make those  
5 estimates invalid. It means that they must be  
6 assessed with respect to the level of accuracy  
7 that they can reliably be assumed to possess.  
8 Q There's a larger rate of error involved with  
9 relying on the American Community Survey data than  
10 on the long form census data?  
11 A That is indeed what I just said, yes.  
12 Q Please continue on and identify for me where else  
13 in Exhibit 142 there's factual information or  
14 statements that you agree with.  
15 A The next statement is what I regard as a factual  
16 statement even though, again, it can be regarded  
17 partly as an opinion statement. It is, "The  
18 errors inherent in such estimates are necessarily  
19 greater for the populations of interest for a  
20 voting rights law. The ACS might provide more or  
21 less reliable estimates on the number of citizens  
22 at the county level. Line drawers seeking to  
23 comply with the VRA are mostly interested, for  
24 example, in the share of citizens at the  
25 neighborhood level that is Latino and of voting

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1 age. In order to get an accurate picture of that  
2 subset of citizen population, the ACS must have a  
3 sufficient number of Latino citizens of voting age  
4 in its yearly samples in the area of geography  
5 relevant for the given redistricting. Therefore,  
6 the error terms accompanying the estimates of the  
7 Latino citizen voting age population will  
8 definitely be larger than those of the CVAP,  
9 citizen voting age population, totals for a given  
10 area," larger area, that's my comment, "of census  
11 geography."  
12 The next paragraph, continuing on with the  
13 factual issues dealing with the problems of making  
14 use of the Latino citizen voting age population  
15 data, deals with the question, which I do not know  
16 the answer for for Wisconsin -- it indicates for  
17 some states, these problems are compounded by the  
18 fact that ACS estimates will be given initially  
19 for 2000 census, not 2010 census geography, but  
20 boundaries of census blocks, block groups and  
21 tracts were changed for the 2010 census. I do not  
22 know whether Wisconsin is one of the states for  
23 which this problem applies. If it is, then the  
24 rest of the paragraph is also relevant and that  
25 can be read into the record. You have a copy.

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1 You will have a copy of this, and that would  
 2 indeed be something that I would reference were it  
 3 to be factually the case that the statement that  
 4 is the beginning of the paragraph, which is in  
 5 this document star 777, referring to the page in  
 6 the law review in which it appears that begins,  
 7 "For some states, these problems are compounded by  
 8 the fact that the ACS estimates will initially be  
 9 given for 2000 census not 2010 census geography."  
 10 If that statement applies to Wisconsin, then the  
 11 rest of the paragraph would be relevant.  
 12 Otherwise it would not be.  
 13 The difficulties that are raised with the  
 14 CVAP, citizen voting age population, data based on  
 15 the fact that it is now coming from the ACS rather  
 16 than the decennial census long form is that the  
 17 ACS, and here I'm reading and continuing a  
 18 sentence, "The ACS, unlike the decennial census,  
 19 is continually in the field with new estimates  
 20 released every year. Prior to the redistricting  
 21 cycle, jurisdictions could rely on the fact that  
 22 citizenship estimates from the decennial census  
 23 long form would generally settle the matter of  
 24 citizenship totals for the following decade. For  
 25 this census and throughout the decade the ACS will

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1 release one-year estimates as well as three- and  
 2 five-year averages. Each will indicate a  
 3 different number of citizens, include a different  
 4 statistical range for each level of geography, and  
 5 be amenable to different arguments as to their  
 6 relative validity." It then continues with  
 7 additional problems. "Although the five-year  
 8 averages, for example, will be available at lower  
 9 levels of geography, their estimates of current  
 10 citizenship rates give past surveys the same  
 11 weight rate as more recent ones. When estimating  
 12 the citizen voting age population of an area, this  
 13 use of outdated data poses new problems since some  
 14 of the ACS respondents included in the released  
 15 averages were below voting age five years ago but  
 16 now will be able to vote. With the yearly release  
 17 of new ACS estimates and lagged averages,  
 18 moreover, not only is there ambiguity as to which  
 19 citizenship estimates to use at the beginning of  
 20 the decade but a new possibility arises of a  
 21 community learning of its potential VRA claim  
 22 later in the decade due to the release of new  
 23 citizenship numbers."  
 24 That's the portion of this document that I  
 25 wish to read into the record because that's the

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1 portion of the document that essentially deals  
 2 with factual issues about the nature of citizen  
 3 voting age population estimates. The relevance of  
 4 this for my own testimony, and, again, as I have  
 5 indicated, while all of the details were not  
 6 matters that I could testify for from my own  
 7 memory, the general nature of this testimony  
 8 involves material with which I was previously  
 9 familiar about the changes in census forms. The  
 10 relevance of it for my own testimony is simply to  
 11 note that any particular estimate of citizen  
 12 voting age population, particularly one that is  
 13 based on estimates over a long-term time period  
 14 that does not include the most current data or is  
 15 based on a sample size that is only a relatively  
 16 small proportion of the population or is based on  
 17 data for a unit of geography that does not  
 18 perfectly coincide with the unit of geography  
 19 within which the citizen voting age is a voting  
 20 rights issue, all of these problems mean that any  
 21 citizen voting age population estimates generated  
 22 by anyone basically have to be taken with a  
 23 certain grain of salt in terms of the degree of  
 24 precision with which those estimates are made.  
 25 Q Do you know whether as of December 14, 2011 three-

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1 and five-year averages of ACS data were available  
 2 at the census tract and block group level?  
 3 A I am not sure. I believe the answer to that  
 4 question is yes, but I am not sure.  
 5 Q Did you look at them at all?  
 6 A No, I did not.  
 7 Q Other than Dr. Mayer's estimates, have you looked  
 8 at any other estimates in this case or relied on  
 9 any other estimates of citizen voting age  
 10 population in the Hispanic districts based on ACS  
 11 data?  
 12 A In my review of materials I took Dr. Mayer's  
 13 estimates as the ones with which I would begin any  
 14 analysis, and I took those to mean that there was  
 15 evidence that it was possible to create a citizen  
 16 voting age population district which -- a Latino  
 17 citizen voting age population district. For  
 18 purposes of analysis that is the conclusion that I  
 19 reached.  
 20 MR. EARLE: I'm sorry. May I have  
 21 that answer read back.  
 22 (Question read)  
 23 Q You did not then review any citizen voting age  
 24 population data for this case other than that that  
 25 was contained in Dr. Mayer's report; is that

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1 right?

2 A Dr. Mayer's report. And I quickly reviewed the

3 data in Dr. Morrison's report which was in my

4 view, given that we were given ballpark estimates,

5 essentially sufficiently close that I wasn't going

6 to worry about it.

7 Q So you did look at Dr. Morrison's report then?

8 A Yes. I did as well.

9 Q You chose not to use any of the citizen voting age

10 population opinions in Dr. Morrison's report in

11 conducting your own analysis in your rebuttal

12 report. Is that fair to say?

13 A Not quite. Essentially my view is that regardless

14 of which set of numbers one uses there is

15 sufficient Latino population to create a citizen

16 voting age majority Latino district.

17 Q In formulating that opinion -- strike that

18 question. In your opinion what is the best

19 measure of Latino voting power? Is it percentage

20 of voting age population, citizen voting age

21 population or some other metric?

22 A The best measure of Latino voting -- here I have

23 to be very careful in the way that I phrase an

24 answer to this question because there will be a

25 difference between what might as a political

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1 scientist be the best estimate and what might for

2 legal purposes be the best estimate. The reason

3 that I make this distinction is that for political

4 science purposes the best way to estimate the

5 ability of a given group to impact an election is

6 by looking at the voting behavior in that

7 election. The reason that that might not,

8 however, necessarily be the legally relevant way

9 of looking at the matter is that as I understand

10 it some courts, not all courts, have taken the

11 position that once we have a sufficiently large

12 minority population in place that were that

13 population politically cohesive and were they to

14 mobilize their potential electorate to participate

15 in the electoral process that that rather than,

16 for example, past evidence of the degree of

17 political mobilization would be the relevant

18 consideration in determining an equal opportunity

19 to elect.

20 So I do not wish to give a legal conclusion

21 here other than to say that as an expert it

22 appears to me that the court cases do not appear

23 to be absolutely decisive on the question of what

24 it is that constitutes a measure of minority

25 ability, opportunity, equal opportunity, to elect.

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1 This area of case law seems to be in some flux.

2 Again, I do not wish to give a legal conclusion,

3 but I would simply call to the attorneys who must

4 persuade the court of one point of view or another

5 that in very recent supreme court cases, like

6 *Bartlett v. Strickland*, the supreme court seems to

7 suggest that while there may be a bright line test

8 for whether or not a group actually can bring a

9 Section 2 claim that test and the *Thornburg v.*

10 *Gingles* three-prong test is not sufficient when

11 there is evidence that the group might have an

12 equal opportunity to elect candidates of choice in

13 a district where in coalition, reliable coalition,

14 with other voters the group would be able to elect

15 a candidate of choice even if its numbers standing

16 alone were not sufficient to allow it to elect a

17 candidate of choice.

18 Q That analysis doesn't come into play here in the

19 Hispanic districts, correct, because your view is

20 there's sufficient Hispanic voting age population

21 in Districts 8 and 9 to give Hispanics a

22 reasonable opportunity to elect a candidate of

23 choice, correct?

24 A No. That's not what I have said. What I have

25 said was that with respect to the threshold test

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1 for whether or not a group is allowed to bring a

2 Section 2 voting rights claim, that is to say

3 whether there is a district which can be created

4 which is a majority citizen voting age population

5 district of that group that my view of the expert

6 witness reports is that that barrier has been met

7 in that it is indeed possible to create a Latino

8 majority citizen voting age population district.

9 The distinction that I am drawing is between the

10 threshold that must be met for a group to be able

11 to bring a Section 2 voting rights claim and that

12 which must be demonstrated in order for a group to

13 prevail on a Section 2 voting rights claim. Here

14 my view is, again, as a non-lawyer, but someone

15 who is a specialist in election law as a political

16 scientist, that the voting rights case law is in

17 some state of flux and that recent supreme court

18 cases, beginning with *Georgia v. Ashcroft* and

19 continuing most notably to the *Strickland* case,

20 *Bartlett v. Strickland*, have strongly stated that

21 in determining whether or not there is a violation

22 of Section 2 a legislature or other body charged

23 with the drawing of plans may seek to demonstrate

24 that the district which they have drawn even if

25 not comprising a 50 percent citizen voting age

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1 population may still be a district in which  
2 minorities of that given type have an opportunity  
3 that is equal to others of electing a candidate of  
4 choice.  
5 Q In your opinion is the first prong of the *Gingles*  
6 test satisfied with respect to Districts 8 and 9?  
7 A It is satisfied with respect to District 8 or it's  
8 satisfied with respect to a single district.  
9 There is no evidence that it is mathematically  
10 possible to create two majority citizen voting age  
11 population districts.  
12 MR. POLAND: Let's take a break for  
13 a minute.  
14 (Discussion off the record)  
15 Q Professor Grofman, before we broke we were looking  
16 at your Exhibit B, and I was asking you some  
17 questions about it. I would like to make sure I  
18 understand your testimony with respect to  
19 Exhibit B and just generally. Is it your opinion  
20 that it is possible to create an effective  
21 majority citizen Hispanic voting age population  
22 district in the area that includes Assembly  
23 Districts 8 and 9?  
24 A Yes, it is.  
25 Q Is it your opinion that Assembly District 8 in

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1 fact accomplishes that and satisfies the ability  
2 of the community to have a reasonable opportunity  
3 to elect a candidate of choice?  
4 MR. HODAN: Objection to form.  
5 A The answer to that question is a somewhat  
6 complicated one which addresses issues of the  
7 reliability of census data in general and of  
8 census voting age population data in particular.  
9 The data that was used by Dr. Mayer to generate  
10 his estimate of 49.6 percent Hispanic citizen  
11 voting age population in the present District 8  
12 should be seen as an estimate. It is also an  
13 estimate that is based on two different kinds of  
14 problems. The first of these problems is that the  
15 citizen voting age population numbers are taken, I  
16 believe, from estimates at the county level, and,  
17 secondly, that the estimates are taken not from  
18 contemporaneous data only but from data over a  
19 time period. And, as indicated in Professor  
20 Persily's Cardozo Law Review article, both of  
21 these are potentially problematic for the level of  
22 accuracy of citizen voting age population. The  
23 fact that we are basically talking about 2010 data  
24 means that if there has been, as we would based on  
25 other expert witness testimony in this case expect

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1 there to be, gains in both the absolute numbers of  
2 Hispanic citizen voting age population persons  
3 residing in District 8 from the time period 2010  
4 when the data were collected to the time of 2012  
5 when there actually will be an election, then  
6 those estimates understate, that is to say the  
7 49.6 percent citizen voting age population  
8 estimate provided by Dr. Mayer understates the  
9 size of the Hispanic voting age population  
10 district in the present District 8 in the election  
11 that will take place in 2012.  
12 Insofar as this is the case and insofar as  
13 these estimates should be taken as only ballpark  
14 estimates, then it seems to me that there is a --  
15 I will simply say a non-trivial, a substantive  
16 probability, the exactly magnitude of which is  
17 difficult to estimate. But certainly if we are  
18 already at 49.6 in 2010 and Dr. Morrison's  
19 essentially un-rebutted testimony in terms of  
20 anything that I have read indicates that there is  
21 a roughly one percentage point increase in the  
22 citizen voting age population in these areas of  
23 Milwaukee per year, it certainly seems to me to be  
24 plausible that the present District 8, that is  
25 District 8 as configured in Act 43, is in fact a

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1 50 percent citizen voting age population district.  
2 Q If you look at Exhibit B, addressing the Hispanic  
3 Districts 8 and 9, you identify Hispanic voting  
4 age population of 60.52 percent.  
5 A Yes.  
6 Q Do you see that? You then have a non-white  
7 population of 77.17 percent?  
8 A If you give me a moment.  
9 Q That's identified --  
10 A Let's see. Yes. That's correct.  
11 Q All right. And then you have got a non-white  
12 voting age population of 70.53 percent, correct?  
13 A That's correct.  
14 Q There's a difference there between the non-white  
15 population and the non-white voting age  
16 population. Do you see that?  
17 A Yes.  
18 Q What is the difference between those two numbers?  
19 A Those two numbers the difference is approximately  
20 6.5 percent. Not quite that.  
21 Q Who makes up that group?  
22 A That's going to be -- some portion of those are  
23 going to be the difference between Hispanic  
24 population and Hispanic voting age population.  
25 That's a gap of about 5.5 percent and then the

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1 other non-white voting age population that is not  
 2 Hispanic would be African American population and  
 3 also some Asian American population and I believe  
 4 perhaps some other very, very small minority  
 5 groups. The exact numbers are provided on --  
 6 MR. HODAN: 135.  
 7 A 130 or 135.  
 8 Q Have you done anything to assess the voting  
 9 patterns of the non-white VAP as indicated in your  
 10 Exhibit B?  
 11 A I have done no analyses other than reviewing  
 12 estimates that are done by Dr. Mayer. And  
 13 Dr. Mayer has attempted to estimate using Spanish  
 14 surname registration data the share of voters in  
 15 these areas though actually what he's done is he's  
 16 attempted to estimate the Latino and non-Latino  
 17 registration proportions essentially in the, as I  
 18 understand it, in his Exhibit 8 in his first  
 19 declaration in the county as a whole. I have in  
 20 fact reviewed some of those numbers, and those  
 21 numbers taken in conjunction with the fact that  
 22 this election is a partisan election with  
 23 essentially two stages, a primary and a general,  
 24 and taking into account the fact that all of the  
 25 available evidence from Milwaukee indicates that

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1 as is true for the country as a whole except for  
 2 some populations of Cubans in Florida Hispanics  
 3 are democrats and Hispanic candidates are  
 4 disproportionately located within the democratic  
 5 party. In the situation in which the relevant  
 6 consideration for an opportunity to elect is to be  
 7 determined by the potential for the election of a  
 8 candidate which is Hispanic and a Hispanic  
 9 candidate of choice of the Hispanic community to  
 10 win the democratic primary and then to go on to  
 11 win the general election with sufficient crossover  
 12 vote from non-Hispanic democrats, it is my view  
 13 that present District 8 provides such an  
 14 opportunity given the partisan and two-stage  
 15 nature of the election for an assembly district in  
 16 the state of Wisconsin.  
 17 Q You examined for the non-Hispanic population.  
 18 Have you examined how the non-Hispanic population  
 19 has voted in previous races in the areas  
 20 encompassed by Districts 8 and 9?  
 21 A The non-Hispanic population in District 8 has in  
 22 elections involving Hispanics essentially voted  
 23 for the Hispanic candidate for the simple reason  
 24 that the Hispanic candidate has in most of these  
 25 elections, and I can be more specific by referring

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1 to my declaration -- in most of these elections  
 2 the Hispanic candidate has run uncontested and has  
 3 received some votes. In the situation where every  
 4 voter has voted for the Hispanic candidate, it is  
 5 essentially the case that the support of all  
 6 voters for the Hispanic candidate can be taken to  
 7 be 100 percent because the only voters who have  
 8 voted are voters who have voted for the Hispanic  
 9 candidate and some of those voters are going to be  
 10 non-Hispanic.  
 11 Q How do you know that some of those voters are  
 12 going to be non-Hispanic?  
 13 A I'm sorry. I do not know as a matter of  
 14 100 percent certainty that some of those voters  
 15 are non-Hispanic. But since some means at least  
 16 one, I believe it is reasonable to believe that at  
 17 least one person who voted in a democratic primary  
 18 is going to be non-Hispanic, and, therefore, the  
 19 only people who voted in that primary, regardless  
 20 of race, were in fact, or of ethnicity, were  
 21 supporters of the winning Hispanic candidate.  
 22 Q Have you reviewed any data, any data whatsoever,  
 23 of how Asian American candidates vote in elections  
 24 in Districts 8 or 9?  
 25 A No. I assume you meant not candidates but voters.

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1 You said Asian American candidates.  
 2 Q I appreciate the correction. Voters is in fact  
 3 what I meant. Yes.  
 4 A No. I have not reviewed such data.  
 5 Q Have you reviewed any data whatsoever of how  
 6 African American voters living in Districts 8 and  
 7 9 have voted in previous elections in those  
 8 districts?  
 9 A The answer to that again is no subject to the  
 10 proviso of the answer that I previously gave which  
 11 is that in District 8 in elections, in fact in  
 12 every election or virtually every election  
 13 involving Hispanic candidates, the candidates who  
 14 were Hispanic have received -- if you give me a  
 15 moment, I will actually give you a more precise  
 16 answer. In every election in AD 8 all candidates  
 17 in the democratic primary have been Hispanic and  
 18 the winner of the democratic primary has gone on  
 19 to win the general election with 100 percent of  
 20 the vote. The last contested election, and here I  
 21 am referring to the last contested general  
 22 election, in the district was 1998. I believe  
 23 there was a contested primary in 2010, but I also  
 24 believe that all of the candidates in District 8  
 25 in that primary were themselves Hispanic.

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1 Q Professor, you were just referring I believe to a  
2 section of your report; is that correct?  
3 A Yes. That's correct. The section I was referring  
4 to was 17 -- I apologize. I should have named it.  
5 Q That's all right.  
6 A 17(d). Numbered Paragraph 17 lettered  
7 subsection -- sorry. I take it back. The section  
8 I was reading from was numbered Paragraph 18.  
9 Q Numbered Paragraph 18?  
10 A Yes.  
11 Q And that's on Page 8 of your report, correct?  
12 A Uh-huh.  
13 Q All right. Now, it's true, isn't it, that past  
14 elections that occurred that you're referring to  
15 were in Assembly District 8 in years before Act 43  
16 went into effect, correct?  
17 A Yes.  
18 Q Now, the geographical layout of the former  
19 Assembly District 8 is different than the  
20 geographic layout of the District 8 under Act 43,  
21 correct?  
22 A Yes. That is correct.  
23 Q So there are certain populations that had been in  
24 former Assembly District 8 and are not included in  
25 new Assembly District 8, correct?

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1 A Yes. That is correct.  
2 Q Is it reasonable to assume that there are  
3 differences -- strike that question. Do you know  
4 or have you studied the turnout among those  
5 persons who had been in former Assembly District 8  
6 and are not in Assembly District 8 under Act 43?  
7 A No. I have not specifically studied nor am I  
8 aware of data that would allow me to have studied  
9 this from the reports that are already available  
10 the turnout levels of individuals who have been  
11 moved from old District 8 to 9 or vice versa.  
12 Q Have you looked at all at any of the population  
13 characteristics of voters who had been contained  
14 in former assembly district and are not included  
15 within new Assembly District 8 under Act 43?  
16 A The way in which I have examined the relative  
17 demographic characteristics of the voters in new  
18 and old 8 and new and old 9 is in terms of the  
19 data that -- is solely in terms of the data that  
20 is presented in appendix -- let's find the right  
21 appendix here.  
22 Q You're referring to your report now, Professor?  
23 A Yes. My own declaration. That would be Exhibit B  
24 which only considers the overall Hispanic and  
25 non-white voting age and total population and does

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1 not specifically examine population as it was  
2 found in old District 8 as opposed to as found in  
3 old District 9.  
4 Q You said district --  
5 A There is no analysis in the report that  
6 specifically examines the question of the  
7 characteristics of either the Hispanic or the  
8 non-Hispanic population in their voting behavior  
9 in terms of which Hispanic and non-Hispanic  
10 populations were shifted from old District 8 to  
11 new District 8 or from old District 8 to new  
12 District 9 or from old District 9 to new District  
13 8 or from old District 9 to new District 9.  
14 Q I would like you to look at Paragraph 19, starting  
15 with Paragraph 19 on Page 8 of your report. In  
16 Paragraph 19(a) you state, "Because of the  
17 similarity in both geography and Hispanic  
18 demography and the continuation of incumbency  
19 status by the Hispanic representative in AD 8, for  
20 all practical purposes we may treat Districts S3  
21 and AD 8 under Act 43 as essentially equivalent to  
22 the districts with the same number in the 2002  
23 court-drawn plan for purposes of reaching  
24 conclusions about the likelihood that these  
25 districts will provide a realistic opportunity to

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1 elect the minority community's candidate of  
2 choice." Do you see that?  
3 A Yes, I do.  
4 Q Now, the similarity of geography is something that  
5 you refer to in the beginning of the statement I  
6 read, correct?  
7 A Yes.  
8 Q What is the geographical similarity that you are  
9 referring to there?  
10 A The geographical similarity that I'm referring to,  
11 if you will give me a moment, the version that I  
12 have as an exhibit is a version that is a black  
13 and white version, so I would prefer to look at  
14 the version that is a colored version of my  
15 exhibit where the data is more readily  
16 interpretable. If you examine the configuration  
17 of Districts 8 and Districts 9, and that is shown  
18 in the very last of my exhibits -- I believe that  
19 is Exhibit G in my declaration. When I'm  
20 referring to the similarity of Hispanic demography  
21 and geography, I'm referring specifically to two  
22 facts. Fact number one is that these districts  
23 are both found within the area that all experts in  
24 this case have identified as the area of Hispanic  
25 population concentration; that is an area which is

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1 indicated essentially in the most heavily red and  
 2 the orange portions of the map, areas that are  
 3 either 24 percent to 50 percent or 51 percent to  
 4 78 percent Hispanic in their character. So both  
 5 of these districts essentially, as with the  
 6 previous District 8, are located in very heavily  
 7 Hispanic portions of the city.

8 The other similarity is, as indicated in  
 9 numbered Paragraph 19(a), the second clause -- the  
 10 first clause referred to geography, and here I was  
 11 referencing the actual geography in which these  
 12 districts are located; that being the geography  
 13 where the Hispanic population concentrations are  
 14 to be found. And then in terms of Hispanic  
 15 demography and the evidence in support of that  
 16 statement is located in exhibit -- let's see.  
 17 That would be Exhibit B as compared to Exhibit D  
 18 where what we see is that if we look at Hispanic  
 19 voting age population in District 8, it, like its  
 20 predecessor District 8, is a very substantially  
 21 Hispanic district with a Hispanic VAP of 60  
 22 percent and a Hispanic pop of roughly 66 percent.  
 23 Indeed, a population and a voting age population  
 24 that is several percentage points, two percentage  
 25 points, higher than the 2002 court map but roughly

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1 similar in underlying Hispanic population voting  
 2 age population demography, the higher voting age  
 3 population actually than District 8.

4 If we look at District No. 9 in terms of its  
 5 similarity, it is similar, actually, not so much  
 6 to District 9 in the previous plan as it was  
 7 initially configured but to District 9 in the  
 8 original that is the 2002 plan as it was  
 9 configured in 2010. So that if you were to  
 10 compare District 9 in Exhibit B with District 9 in  
 11 Exhibit C, what you would see is that that  
 12 district reflects a similar though even larger, in  
 13 fact, actually, very considerably larger, Hispanic  
 14 population than its counterpart district in the  
 15 2002 plan using the same census data that is 2010  
 16 census data rather than using 2002 census data.

17 Q Now, it's true if you -- look at Exhibit G,  
 18 please. I want you to look at District No. 9 as  
 19 portrayed in Exhibit G.

20 A Yes.

21 Q Let me ask you before I go on, who prepared  
 22 Exhibit G?

23 A That was prepared by counsel at my request.

24 Q Which counsel prepared that?

25 A The person with whom I communicated was

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1 Patrick Hodan.

2 Q So your understanding is Mr. Hodan either prepared  
 3 or had that prepared?

4 A Yes. That is correct.

5 Q And that was provided to you?

6 A That is correct.

7 Q Did you do anything at all to test the accuracy of  
 8 Exhibit G?

9 A No, I did not.

10 Q You were relying on someone else to prepare that  
 11 and prepare it accurately?

12 A Yes. That is correct.

13 Q So if Exhibit G does not in fact portray an  
 14 accurate picture of what it depicts, that would  
 15 undercut your analysis, wouldn't it?

16 A To the extent that Exhibit G was substantially  
 17 flawed, that would undercut it. To the extent  
 18 that Exhibit G merely reflected some minor  
 19 difference between 52 percent and 54 percent or  
 20 something like that, no, it would not. But, yes,  
 21 if there is an error then of course there is an  
 22 error.

23 Q Now, looking at Assembly District 9 as drawn in  
 24 Exhibit G, do you see the -- there is an outline  
 25 of Assembly District 9, correct, and that's --

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1 A That's the current 9.

2 Q That's the current 9. Right. And there are areas  
 3 of current 9 that incorporate areas that are in  
 4 yellow, correct?

5 A Yes. That's correct.

6 Q Do you know whether those areas that are  
 7 incorporated there that are in yellow previously  
 8 were in District 8 or 9?

9 A I do not know the answer to that question.

10 Q Have you done any kind of an analysis of the  
 11 population that previously had been included in  
 12 Assembly Districts 8 or 9 that was not included in  
 13 new Districts 8 or 9?

14 A As I previously indicated, the answer to that  
 15 question is no.

16 Q Looking at the key in the upper right-hand corner  
 17 of Exhibit G, there are ranges of percentages of  
 18 Hispanic population, correct?

19 A Yes.

20 Q Who decided on what those ranges should be?

21 A Looking at this, my bet is that this was a  
 22 computer generated printout.

23 Q Did you request that those ranges ought to be  
 24 portrayed as they are above --

25 A No.

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1 Q -- or was that --  
 2 A No. I did not. If I can complete the answer,  
 3 though, I also, having reviewed this material, did  
 4 not see any particular reason to request that the  
 5 map be revised because the key indicator here are  
 6 the districts that are 50 percent and above in  
 7 population.  
 8 Q Why did you choose 50 percent and above?  
 9 A Because that gives you a sense of whether or not  
 10 this is a core element of the Hispanic community  
 11 and it also gives you a sense -- based on what we  
 12 know about Hispanic patterns of population  
 13 movement, it gives you a sense of from where  
 14 Hispanic population is likely to spread because  
 15 usually the patterns, at least in all cases that  
 16 I'm aware of population movement, tend to be ones  
 17 where you have a core population area and then  
 18 population radiates outward from that core after  
 19 the core has been essentially filled in. And so,  
 20 therefore, this gives a sense of areas where there  
 21 might be particular population growth. And one  
 22 can in fact -- I should add this. I'm sorry.  
 23 This is partly in answer to your question. One  
 24 can also then check to see whether these are areas  
 25 of population growth.

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1 Q There are areas that are between 24 and 50 percent  
 2 that extend outside of the boundaries of  
 3 District 9 as portrayed in Exhibit G, correct?  
 4 A Yes. That's correct.  
 5 Q Those were not included, correct?  
 6 A Yes.  
 7 Q They could have been included to increase the  
 8 percentage of Hispanic persons in District 9,  
 9 correct?  
 10 A They could have been included, though, I  
 11 believe -- again, I have no way of knowing exactly  
 12 why this district was configured as it was other  
 13 than in terms of population demography. I would  
 14 simply note what is visually apparent; that these  
 15 two areas to which you are referring are areas  
 16 which include sort of extensions such that were  
 17 one to include them they would apparently move the  
 18 district into other parts of the present S3.  
 19 Q What's being measured in Exhibit G is Hispanic  
 20 persons, correct?  
 21 A That's correct.  
 22 Q So this is not voting age population?  
 23 A No. As I understand it this is persons.  
 24 Q And it's not citizen voting age population?  
 25 A That's correct.

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1 Q Turning your attention to Exhibit F to your  
 2 report. Is this an exhibit that you prepared?  
 3 A No. It is an exhibit that was prepared at my  
 4 request.  
 5 Q Do you know who prepared Exhibit F?  
 6 A I requested the preparation of this exhibit from  
 7 counsel, and, in particular, from Patrick Hodan  
 8 and then received such an exhibit from Mr. Hodan.  
 9 Q You don't know who prepared it, though?  
 10 A No, I do not.  
 11 Q You are relying on it, though, for opinions that  
 12 you're giving in this case?  
 13 A Yes. To the extent that my opinions in fact draw  
 14 on the degree of congruence across district lines  
 15 the answer to that is yes, but I've primarily, as  
 16 I have indicated in my actual declaration -- I  
 17 primarily looked at the degree to which the senate  
 18 configurations were maintained because those are  
 19 the areas that reflect the major population  
 20 concentrations of either African American or  
 21 Latino populations.  
 22 Q Looking at Exhibit E, again, is that an exhibit  
 23 that you prepared?  
 24 A No, it is not.  
 25 Q Do you know who prepared Exhibit E?

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1 A The same answer applies to that exhibit as to my  
 2 answer to the previous questions; namely that I  
 3 requested that such a document be prepared and  
 4 that I asked counsel, in this case specifically  
 5 Mr. Hodan, to have such a document prepared.  
 6 Q Sorry. I didn't mean to cut you off there. Did  
 7 you finish your response?  
 8 A Yes. I did. Thank you.  
 9 Q If I look in the key in the top right-hand corner  
 10 of Exhibit E, those are wards, correct, and  
 11 they're colored by percentage of African Americans  
 12 in certain districts in Milwaukee?  
 13 A Yes.  
 14 Q I notice that the measure, the scale, is different  
 15 in that key in terms of the ranges that are  
 16 portrayed, correct?  
 17 A Yes.  
 18 Q Why is it different?  
 19 A Again, without knowing specifically the computer  
 20 program that generated this, based on my own  
 21 knowledge of the way in which maps like this are  
 22 generated, my belief is that this was a  
 23 computer-generated scaling system. And the reason  
 24 that it differs in any case, regardless of whether  
 25 it was created by hand or by computer -- the

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1 reason that it differs from the scale that is used  
 2 for the Hispanic population is that the range of  
 3 variation across these units in black population  
 4 is greater than the range of variation that exists  
 5 across Hispanic population, and, therefore, one  
 6 has at the end a dark red color that in fact  
 7 reflects a larger minority population proportion  
 8 reflective of the fact that the African American  
 9 population is even more concentrated in the city  
 10 of Milwaukee than is Hispanic population.  
 11 Q I note, for example, that the range that you have  
 12 in Exhibit G for an Hispanic population -- the top  
 13 ranges from 50 percent to 78 percent, correct?  
 14 A Yes.  
 15 Q And the cutoff is different or the top range in  
 16 the African American population in Exhibit E.  
 17 It's 74 percent to 96 percent. Do you see that?  
 18 A Yes.  
 19 Q Why the different cutoffs?  
 20 MR. HODAN: Objection, asked and  
 21 answered.  
 22 A That is the way I would respond. I believe I have  
 23 said what I know, all that I know, about the  
 24 coding scale here.  
 25 Q So you did not ask Mr. Hodan to prepare Exhibit E

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1 or Exhibit G with those specific cutoff ranges?  
 2 A That is correct. Nor did I ask after I received  
 3 it that a different exhibit be prepared.  
 4 Q You also state in Paragraph 19(a) -- you refer to  
 5 incumbency status. Do you see that?  
 6 A Yes.  
 7 Q Why do you note the incumbency status by Hispanic  
 8 representatives in AD 8?  
 9 A The answer to that actually reflects an incomplete  
 10 answer I gave you to an earlier question. You had  
 11 asked me what are the factors that might be taken  
 12 into account, and I neglected to answer in that  
 13 response the incumbency status is an extremely  
 14 important factor to be taken into account in  
 15 assessing the ability of a minority group to elect  
 16 candidates of its choice with an equal opportunity  
 17 to the members of the non-minority community.  
 18 Essentially in situations where there is in place  
 19 a non-Hispanic incumbent, the likelihood that a  
 20 Hispanic would be able to win office is diminished  
 21 and the likelihood that Hispanic success will  
 22 occur is almost certainly likely to be deferred  
 23 until such time as the seat becomes an open seat.  
 24 However, on the other hand, in those  
 25 instances where there is an Hispanic incumbent in

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1 place, the advantages of incumbency essentially  
 2 accrue to the Hispanic community and its candidate  
 3 of choice so that there is a greater advantage in  
 4 converting population strength into the likelihood  
 5 of electoral success when there is an incumbent of  
 6 that minority community who is a candidate of  
 7 choice of that minority community in place in the  
 8 district.  
 9 Q Does the geography of the assembly district or the  
 10 changes in the geography of the assembly district  
 11 potentially make a difference in whether a  
 12 Hispanic incumbent can continue in a new district?  
 13 A There are two issues here. Certainly in principle  
 14 changes in geography might matter. But where the  
 15 change of geography is such as to essentially  
 16 operate within the confines of a contiguous  
 17 concentrated minority community I would anticipate  
 18 that the consequences are going to be relatively  
 19 minimal when there is an incumbent of that  
 20 minority community in place. Moreover, insofar as  
 21 there are changes in demography, if the changes in  
 22 demography operate so as to take a district in  
 23 which there was previously a non-minority  
 24 incumbent and locate the home of that incumbent in  
 25 another district so that that incumbent, previous

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1 incumbent, no longer is identified as an  
 2 incumbent, that also has consequences. So if  
 3 there is an open seat election in say District 9  
 4 or an election in which there is no one previously  
 5 resident in the district that is now District 9,  
 6 that does affect the likelihood of a Hispanic  
 7 candidate winning if the previous incumbent was,  
 8 as is the case here, a non-Hispanic.  
 9 Q Did you do anything at all to look at the change  
 10 in the geographic shape, the layout, of  
 11 Districts 8 and 9 to determine whether those  
 12 changes might make it more or less likely that the  
 13 incumbents would remain in the districts?  
 14 A The answer to that is the only information I have  
 15 about incumbency status is provided by counsel,  
 16 and it is my understanding that there is an  
 17 Hispanic incumbent in present District 8 and that  
 18 there is not an incumbent present in District 9.  
 19 Q Do you know who the incumbent is in District 8?  
 20 A I believe the incumbent in District 8 is -- I  
 21 apologize for mispronouncing names. I believe it  
 22 is Zamarripa.  
 23 Q JoCasta Zamarripa?  
 24 A I believe so, yes.  
 25 Q Do you know -- have you done anything to look and

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1 see whether the change in the geographic layout of  
 2 District 8 might change or affect  
 3 JoCasta Zamarrripa's chances of or likelihood of  
 4 being reelected to the new District 8?  
 5 A Only to the extent that I have previously  
 6 indicated in my testimony about the racial and  
 7 ethnic demography of that districts; that is to  
 8 say the fact that it remains a district with an  
 9 Hispanic voting age majority that is now a  
 10 district with a larger Hispanic voting age  
 11 population than was the case in 2002 and a  
 12 Hispanic incumbent was elected or in this case  
 13 reelected in the district and that it is a  
 14 district which is if not at certainly virtually  
 15 very close to virtually identical to if not at or  
 16 over an Hispanic citizen voting age majority  
 17 district and that furthermore if one examines the  
 18 data to be found in Exhibit --  
 19 THE WITNESS: Sorry the mention of  
 20 Exhibit B is such a disconcerting thing.  
 21 A In Exhibit B, to complete my answer, demonstrates  
 22 that the district in which Ms. Zamarrripa will be  
 23 running is now a district with a non-white voting  
 24 age population of 70.53 percent which I believe to  
 25 be higher than the previous non-white voting age

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1 population as of 2002 and similarly that the  
 2 non-white population of 77.1 percent, 77.2  
 3 percent, I'll average it up, is also higher than  
 4 was the case in the corresponding district in the  
 5 court-drawn plan in 2002.  
 6 Q But you have not studied the turnout rates in any  
 7 of the populations portrayed in Exhibit B,  
 8 correct?  
 9 A The answer to that one is yes and no. If you are  
 10 asking me have I specifically conducted analyses  
 11 of my own using ecological regression and/or other  
 12 techniques, the answer is no. If you are asking  
 13 me have I reviewed the evidence provided by  
 14 Professor Mayer in his discussion of registration  
 15 and turnout, the answer is yes.  
 16 Q Is citizenship an important consideration when  
 17 looking at the black voting age population?  
 18 A No, it is not, in general though there may be some  
 19 instances of African Americans who are actually  
 20 African Americans because they are presently  
 21 resident in the United States but who may come  
 22 from other countries. This issue is a matter of  
 23 concern in some jurisdictions where there is  
 24 substantial Caribbean black population. I do not  
 25 know whether or not there is any proportion

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1 whatsoever and certainly any substantial  
 2 proportion of the African American population in  
 3 this area in Milwaukee which is Caribbean.  
 4 Q And citizenship, though, does affect the  
 5 percentage of the population of voting age Latino  
 6 voters who actually vote, correct?  
 7 A Yes. As I've previously stated.  
 8 Q It's going to lower that percentage, correct?  
 9 A Well --  
 10 MR. HODAN: Object to form.  
 11 Object, asked and answered.  
 12 You can go ahead.  
 13 Q If they're not citizens, they can't vote, correct?  
 14 A That's correct. I think we can all agree on that.  
 15 Q All right. Very good.  
 16 A Just for the record, I should indicate that there  
 17 have been lawsuits arguing that individuals who  
 18 are in fact not citizens have in fact voted. I  
 19 regard those cases as generally speaking malicious  
 20 nuisance suits and the number of Hispanics who  
 21 have been identified as illegally voting who do  
 22 not have citizenship is miniscule to non-existent.  
 23 Q You have an HVP in Exhibit B for District 9 of  
 24 54 percent, correct?  
 25 A Yes. That's correct.

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1 Q And you would expect that to be even lower if you  
 2 were to look at the citizen voting age population,  
 3 correct?  
 4 A Yes. That is correct.  
 5 Q And for District 8 you have got 60.52 percent,  
 6 correct?  
 7 A Yes.  
 8 Q And you would expect that to be even lower, again,  
 9 if you took citizenship into account, correct?  
 10 A Yes. That is correct.  
 11 Q It's true, isn't it, Professor, that turnout rates  
 12 and citizenship are both higher for white voting  
 13 age population than for Hispanic voting age  
 14 population?  
 15 A Yes. That is correct.  
 16 Q And that would apply in these districts we're  
 17 looking at as well?  
 18 A Yes. That is correct.  
 19 Q As we have gone over your report here, have our  
 20 discussions at all jogged your memory about  
 21 Exhibit D in your report and where you might have  
 22 received that information from?  
 23 A No. They have not.  
 24 Q You referred before in our discussion a few  
 25 minutes ago about incumbency. Do you recall that

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# VIDEOTAPE DEPOSITION OF BERNARD N. GROFMAN, Ph.D. 2/3/2012

1 discussion?

2 A Yes.

3 Q Do you know what party JoCasta Zamarripa belongs

4 to, political party?

5 A She should be a democrat.

6 Q If the democratic party wanted to help assure her

7 reelection, would that assistance matter?

8 A If any group wished to assure the election of any

9 candidate, their assistance would matter. I have

10 no knowledge whatsoever about the resources of the

11 democratic party in the area that Ms. Zamarripa

12 represents.

13 Q If the democratic party were to withdraw its

14 support for a representative, could that make a

15 difference in the community's ability, the

16 minority community's ability, to elect a

17 representative of choice?

18 A That is difficult to answer in the abstract. It

19 would also depend upon exactly where support was

20 given. It's impossible for me to answer that

21 question in the abstract.

22 Q If you took a Latino district like District 8 or 9

23 and you either reduced the Latino population or

24 added other geographic areas that had a high

25 turnout of non-Latino whites, could that affect

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1 the ability of the Latino community to elect a

2 candidate of choice?

3 MR. HODAN: Object to form.

4 A Could you repeat the question? I will try to

5 respond.

6 MR. POLAND: Could you read it

7 back.

8 (Question read)

9 A If you take a district which has Latinos in it and

10 you remove Latinos from the district, that reduces

11 the likelihood of Latino electoral success. If

12 you take a district which has Latinos in it and

13 you somehow add white population to it without at

14 the same time reducing the Hispanic population in

15 it, which I'm not sure is mathematically possible

16 given the ideal population constraints -- but

17 somehow if you could do it, given that of course

18 if you're adding white population to a district,

19 the Latino population proportion will decline and

20 therefore the Latino ability to elect a candidate

21 of choice may be affected if indeed the Latino

22 population was at a cusp such that its ability to

23 have a realistic equal opportunity to elect

24 candidates of choice would be affected one way or

25 another.

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1 MR. POLAND: Patrick, at this point

2 I'm going to pass the witness over to

3 co-counsel and let co-counsel --

4 MR. HODAN: Why don't we take a

5 quick break.

6 MR. POLAND: Do you want to take a

7 break? That's fine.

8 (Recess)

9

10 EXAMINATION

11 By Mr. Earle:

12 Q Professor Grofman, I want to understand some of

13 the predicates for your opinions here. I was

14 listening intently to your answers to the

15 questions from Mr. Poland, and I just want to see

16 if I got it right; okay?

17 A Uh-huh.

18 Q So is it accurate to say that when it comes to

19 HCVAP, Hispanic citizen voting age population, you

20 concede that it is possible to draw within the

21 vicinity of the Latino community on the near south

22 side of Milwaukee a majority Hispanic citizen

23 voting age population district?

24 A Yes. That is right except of course I would not

25 use the language concede because that suggests

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1 that I'm being somehow reluctantly forced to a

2 conclusion against my will. What I would say is

3 that the data as interpreted on their face

4 demonstrate that a Hispanic citizen voting age

5 population district can be created within that

6 area.

7 Q And you would agree that such a district would be

8 geographically compact, correct?

9 A Yes.

10 Q So you would for purposes of this case as one of

11 the experts of the defendants concede prong one of

12 *Gingles*, correct?

13 A Yes. That is correct.

14 Q You have in front of you Exhibit 55.

15 A Uh-huh.

16 Q Which is Dr. Mayer's report. Within it there's a

17 red map that represents that district.

18 A Yes.

19 Q Do you contest Professor Mayer's calculations of

20 what the population thresholds are in that

21 district?

22 A I don't know what population thresholds mean as

23 you are using it.

24 Q Well, you kept saying that Dr. Mayer had

25 calculated that the HCVAP of Act 43 Assembly

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1 District 8 was 49.6 percent, right?  
 2 A Yes. That's correct. That's a number that is  
 3 given. If you will give me a moment I will find  
 4 the page --  
 5 Q I don't think that's very accurate, but go ahead.  
 6 A Where does it show here? That number is found on  
 7 Page 22 of Dr. Mayer's deposition, and it is  
 8 located in the essentially the third paragraph  
 9 from the bottom right behind (4).  
 10 Q Page 22 of his report are you talking about?  
 11 A Of his report. Yes. I'm sorry. Some things are  
 12 called reports. Some things are called  
 13 declarations. Sometimes I have to double-check to  
 14 make sure what it is we're referencing. And there  
 15 were multiple reports by Mayer. Yes. We're  
 16 talking about his report that is Exhibit No. 55  
 17 and we're talking on Page 22 and we're talking  
 18 about a paragraph that begins, "This gives a total  
 19 voting age population of" and then continues  
 20 "Given a Latino citizen voting age population of  
 21 14,788 eligible Latinos constitute 49.6 percent of  
 22 the district voting age population" which I take  
 23 to mean that the 49.6 percent of citizen voting  
 24 age population.  
 25 Q You similarly concede that as far as Latino

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1 community on the near south side --  
 2 A Have I answered your question? My belief is that  
 3 if you repeat the question, you were asking me  
 4 whether I agree with his calculation, and the  
 5 answer, of course, is that I have indicated that I  
 6 do not agree that this is an accurate calculation  
 7 because I believe that it actually -- that  
 8 actually given the data on which it is based  
 9 almost certainly understates by some amount the  
 10 actual Hispanic citizen voting age population of  
 11 the district.  
 12 Q You indicated that you had glanced at -- I may not  
 13 be using the same adjective that you used or verb.  
 14 You glanced at the Morrison report.  
 15 A That's right.  
 16 Q Why did you treat it so scantily?  
 17 A In a situation where there is essentially a  
 18 dispute between experts, the issue is what is a  
 19 reasonable number to use. My sense is since we're  
 20 talking about ballpark figures, because that's the  
 21 best I'm prepared to acknowledge you're going to  
 22 get out of citizen voting age population  
 23 estimates, there's not enough for me to worry  
 24 about between the Morrison estimates and the  
 25 estimates provided by Dr. Mayer for me to choose

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1 to spend the State's money attempting to  
 2 independently establish a citizen voting age  
 3 population number that would at best be only an  
 4 estimate. Given that it is Dr. Mayer who is  
 5 making the claims about citizen voting age  
 6 population about his new district and in order to  
 7 maintain compatibility between the numbers that  
 8 are going to be used to evaluate Dr. Mayer's  
 9 claims about his new district and Dr. Mayer's  
 10 claims about his old district, it makes most sense  
 11 to use Dr. Mayer's numbers because then I'm  
 12 comparing apples and apples. I don't have any  
 13 numbers from Dr. Morrison that would allow me to  
 14 evaluate the citizen voting age population in  
 15 Dr. Mayer's district. So that's basically why I'm  
 16 using Dr. Mayer's numbers, and, having used  
 17 Dr. Mayer's numbers, I have indicated that though  
 18 I am using them I do have some skepticism about  
 19 their accuracy based on the material that I read  
 20 into the record from Professor Persily which is  
 21 intended merely to put in a form that is  
 22 accessible to you and to the court statements that  
 23 I myself might have made about the limitations of  
 24 the accuracy of this data, and, as I further  
 25 indicated in my previous response to questions

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1 that have been asked me, the specific problems in  
 2 addition to the difficulties with the ACS  
 3 survey --  
 4 Q You're going into the area of non-responsive  
 5 material now. I would ask that you --  
 6 MR. HODAN: Excuse me, Counsel.  
 7 Let him finish.  
 8 MR. EARLE: I'm going to impose an  
 9 objection. I've been in situations where  
 10 experts who are very experienced at being  
 11 experts will repeatedly provide extremely  
 12 verbose and long answers that make it almost  
 13 impossible to conduct what normally would be  
 14 a seven-hour deposition within seven hours by  
 15 adding superfluous material which is what is  
 16 happening right here right now. So I was  
 17 going to admonish the witness to please  
 18 constrain his answers to the question that  
 19 I'm asking.  
 20 Q Do you think you can do that going forward,  
 21 Dr. Grofman?  
 22 MR. HODAN: I think we need to  
 23 lower the tone. I think we started at 10:00.  
 24 It's now 3:00. We have had a lunch break.  
 25 We have had other breaks. I would appreciate

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1 if you would let him continue to answer the  
 2 question. You asked the open-ended question.  
 3 He's entitled to give you --  
 4 MR. EARLE: That was not an  
 5 open-ended question.  
 6 Q You can finish your question, but please be  
 7 admonished to concentrate your answers to the  
 8 question and be responsive to the question and not  
 9 give me filibuster answers; okay?  
 10 MR. HODAN: Counsel, I would ask  
 11 that you --  
 12 MR. EARLE: I'm making a record is  
 13 what I'm doing which I think is appropriate  
 14 under these circumstances because I sat here  
 15 and listened to how Professor Grofman  
 16 answered questions during the first segment  
 17 of this deposition and he's jumped right into  
 18 it with me. I don't appreciate it. Okay?  
 19 Q Go ahead. You finish your answer, and I'll ask  
 20 you the next question. Do you have anything more  
 21 to say?  
 22 A No. I've completed my answer.  
 23 Q Thank you. Now, Dr. Morrison was being paid by  
 24 the State to provide an estimate of HCVAP for  
 25 Assembly District 8 under Act 43, and he came up

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1 with 40.9 percent, correct?  
 2 A Yes.  
 3 Q Did you look at the way that Dr. Morrison analyzed  
 4 his data?  
 5 A No, I did not.  
 6 Q Dr. Morrison took census tract data from the ACS  
 7 and aggregated it to come to his calculation of  
 8 citizenship. Do you find that to be an acceptable  
 9 methodology?  
 10 A The ACS data is not contemporaneous data, so it is  
 11 an acceptable methodology subject to the  
 12 constraints on reliability that I've already  
 13 answered in my answer to previous questions.  
 14 Q And you understand that the census tract data at  
 15 the census tract level the ACS data suffers from  
 16 severe reliability constraints, correct?  
 17 A All ACS data suffers from reliability constraints.  
 18 The smaller the unit of geography generally  
 19 speaking the greater the problems.  
 20 Q So if you take two assembly districts of 57,000  
 21 people and you aggregate census tract data from  
 22 ACS to calculate citizenship for that district,  
 23 you would agree that that is significantly  
 24 unreliable, correct?  
 25 A I would agree that there are problems, and, to

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1 repeat my previous testimony, that all of these  
 2 estimates are at best ballpark estimates.  
 3 Q Understood. Now, if you contrast that with a  
 4 situation in which you take city of Milwaukee data  
 5 from ACS with regards to citizenship and  
 6 extrapolate that to the assembly districts in  
 7 question, that would be a more reliable approach,  
 8 correct?  
 9 A Not necessarily. It's essentially impossible to  
 10 answer that question because there are two  
 11 different kinds of errors that are taking place  
 12 and which of them is the more important there's no  
 13 way at least in principle for me to know. Do you  
 14 wish to me to continue my answer?  
 15 Q Yes. Please.  
 16 A The two types of error, as previously indicated in  
 17 my testimony -- the first type of error occurs  
 18 because when you go down to small units of census  
 19 aggregation there is greater range of variability  
 20 in the reliability of the estimates because you  
 21 generally have fewer people. The problem with the  
 22 larger unit of aggregation is that you are taking  
 23 a data estimate for a large unit of geography and  
 24 then applying it to a subset of that unit of  
 25 geography so that the characteristics of the

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1 subset may or may not perfectly mirror, be a  
 2 random sample of the characteristics of the larger  
 3 unit from which the inference is being drawn.  
 4 These are both problems. They are different kinds  
 5 of problems. It's impossible for me a priori to  
 6 tell me which of these is going to be the greater  
 7 problem.  
 8 Q But we all agree that when it comes to this  
 9 instance in this case whether you take  
 10 Dr. Morrison's 40.9 percent as ascribed to Act 43  
 11 Assembly District 8 or Dr. Mayer's 49 percent for  
 12 the same district, both indicate that Act 43 is  
 13 below the 50 percent threshold, correct?  
 14 A No. That is not correct. What Dr. Morrison's  
 15 data indicates is that it would be below the  
 16 50 percent threshold even in 2012. What  
 17 Dr. Mayer's data indicate is that it was minuscule  
 18 below the 50 percent threshold in 2010.  
 19 Q Fair enough.  
 20 A But that in the 1012 election, as I previously  
 21 answered, it would almost certainly be above.  
 22 Q Now, I want to be very clear. You did no  
 23 polarization analysis whatsoever?  
 24 A That's correct except for reviewing the analyses  
 25 that were done by Dr. Mayer.

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# VIDEOTAPE DEPOSITION OF BERNARD N. GROFMAN, Ph.D. 2/3/2012

1 Q Now, did you review the complaint of Voces de la  
2 Frontera?  
3 A I believe I certainly -- I certainly skimmed the  
4 complaint of Voces de la Frontera.  
5 MR. EARLE: Let's mark it.  
6 MS. LAZAR: I believe it's been  
7 marked.  
8 MR. EARLE: For me to find it  
9 again --  
10 MS. LAZAR: It won't be the first  
11 duplicate we have.  
12 (Exhibit No. 143 marked for  
13 identification)  
14 Q You are refreshing your recollection as to that  
15 complaint?  
16 A Yes.  
17 Q What I would like to do very quickly here is go  
18 through this and figure out where you may be at  
19 odds at trial in this matter. If you would open  
20 it up to Page 4 where you see Background,  
21 Paragraph 17 -- if you would just take a very  
22 quick look at Paragraph 17 and tell me if there's  
23 anything in Paragraph 17 you dispute.  
24 A I just checked to see that that number corresponds  
25 to the number on my own exhibits just to verify

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1 that there aren't any mathematical problems on  
2 either of them.  
3 Q Sure.  
4 A I have no reason to doubt that number.  
5 Q So we have no dispute about Paragraph 17?  
6 A Uh-huh.  
7 Q Paragraph 18. Are we on the same page with  
8 regards to Paragraph 18?  
9 A I have no reason to dispute the U.S. Census with  
10 respect to its estimates.  
11 Q Let's go to Paragraph 19. How are we doing on  
12 Paragraph 19?  
13 A That one I would have to compare the data with  
14 data specifically on that point that's provided in  
15 Professor Morrison's affidavit.  
16 Q Go ahead.  
17 A So if you will give me a moment.  
18 Q Uh-huh.  
19 A At this stage, because of the large number of  
20 exhibits that I've been handed, I tried to --  
21 MS. LAZAR: It's 32.  
22 THE WITNESS: To actually try to  
23 find 32 in this pile --  
24 MR. HODAN: You can use this.  
25 THE WITNESS: That's okay. I may

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1 have to take you up on it. That's what I get  
2 for not organizing these in numerical order.  
3 A There appear to be --  
4 THE WITNESS: That's a bad one to  
5 look at. I've got a color version.  
6 A The answer that I would give to agreement is that  
7 it certainly -- in the area of the 8th assembly  
8 district it depends on whether we're talking about  
9 the old 8 or the new 8. At least according to  
10 Dr. Morrison's data there are two areas of very  
11 rapid Hispanic population growth and I believe one  
12 of them is in new 8 and one of them is in old 8.  
13 Q So we don't have a substantive dispute --  
14 A I'm sorry. One of them is new 8 and one is in new  
15 9. Sorry. I misspoke.  
16 Q So we don't have a substantive dispute in  
17 Paragraph 19?  
18 A I don't believe so, no. Subject to the provision  
19 of what I just said, no, we do not.  
20 Q Paragraph No. 20?  
21 A That seems to be an accurate version of division.  
22 Q Paragraph 21? This is a long paragraph. If you  
23 can take a little time here to read it and I'll be  
24 patient.  
25 A The first two sentences are matters of fact and

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1 therefore not in dispute. The second sentence is  
2 contradicted by Dr. Mayer's testimony. I'm sorry.  
3 That's perhaps -- yes. That is contradicted by  
4 Dr. Mayer's testimony because if you read  
5 Dr. Mayer's testimony this says citizen voting age  
6 Latino voters well below 45 percent in each  
7 district whereas Dr. Mayer's testimony states that  
8 the citizen voting age population estimate that he  
9 arrived at is 49.6 percent in 2010 of the voting  
10 age population in District 8 and so therefore  
11 there's a contradiction between the claims made in  
12 this legal document and the claims made by the  
13 expert witness employed by the folks who prepared  
14 this legal document.  
15 Q But it's consistent with what a Dr. Morrison says?  
16 A Yes. That is correct.  
17 Q How about the next sentence? Do you dispute the  
18 part about it being divided into two separate  
19 districts?  
20 MR. HODAN: Which sentence?  
21 MR. EARLE: We're still on the  
22 45 percent sentence.  
23 MR. HODAN: Which sentence so we're  
24 all clear?  
25 MR. EARLE: Three.

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1 A The third sentence has essentially two different  
2 components. One is a factual claim, and, as I  
3 previously testified, it is consistent with  
4 Dr. Morrison's testimony but it is not consistent  
5 with the testimony of your own expert. The issue  
6 of whether this dilutes the voting strength of the  
7 citizen voting age population is essentially a  
8 legal judgment and one which the court will make.  
9 I have my own views as to whether this district is  
10 an opportunity district, but that's a matter  
11 that's probably best left to the court.  
12 The next sentence, "The division of the  
13 community into two separate adjacent but diluted  
14 assembly districts also divides Latino community's  
15 established business district in a way that  
16 fractures the cohesiveness of the community and  
17 ignores natural community boundaries." Here I  
18 cannot agree for two reasons. Reason number one  
19 is that I lack sufficient knowledge of the  
20 composition of the minority community and the  
21 location of its business community. Reason number  
22 two is the basis of my own testimony about the way  
23 in which these districts operate vis-à-vis  
24 minority representation is that the choice that  
25 the legislature or anyone else confronts is

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1 between drawing one district which will  
2 essentially be a safe seat for Latinos and then a  
3 second district which will have a long, long  
4 delayed and probably never opportunity in this  
5 decade of electing a Latino representative versus  
6 drawing a district of a lesser population which is  
7 an equal opportunity district and a second  
8 district which has the potential over the course  
9 of a decade to also become a district where  
10 minorities have a realistic opportunity to elect.  
11 Q But the significant part of your -- as far as the  
12 last sentence of that paragraph, Paragraph 21,  
13 goes, because of your lack of knowledge about the  
14 nature of that community you lack the confidence  
15 to testify as to whether dividing the community  
16 along 16th Street fractures of cohesiveness of the  
17 community and whether that ignores natural  
18 community boundaries. You're not in a position to  
19 competently testify about that; is that correct?  
20 A Yes. Subject to the provision of my previous  
21 answer, that is correct.  
22 Q Paragraph 22 states, "The data from the April 2010  
23 census and the annual American Community Survey  
24 indicate that the current population of the Latino  
25 community on Milwaukee's near south side in the

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1 vicinity of the reapportioned 8th and 9th assembly  
2 districts as adopted by the legislature is now  
3 sufficiently large and geographically compact to  
4 allow for one assembly district with an effective  
5 voting majority of voting age Latinos who are  
6 United States citizens." You have already agreed  
7 that -- you don't dispute that?  
8 A That is correct. That is not in dispute.  
9 Q Paragraph 23 --  
10 MR. HODAN: I'm going to object to  
11 form.  
12 A I've agreed -- the word *effective* -- I don't know  
13 what it means in this context, so, therefore, I  
14 can't quite agree. I will agree that I have  
15 previously testified that you can draw a Hispanic  
16 citizen voting age population district. Since I  
17 don't know what you mean by an effective voting  
18 majority, I'm going to pass on agreeing to that.  
19 Q Fair enough. But you have testified at some  
20 length here today that you are a political  
21 scientist who's engaged in scholarly review of the  
22 case law in this area, correct?  
23 A Yes. That's correct as well.  
24 Q So you have read the decisions by courts dealing  
25 with Latino voting majorities in particular use

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1 the word *effective* voting majority, correct?  
2 A They have in the past used the word *effective*  
3 voting majority, and that word is found also in my  
4 own work. I think it is fair to say that it is  
5 actually my term, though I will not swear that  
6 that is indeed the case.  
7 Q You're claiming ownership of the term?  
8 A Yes. I believe so. I believe so.  
9 Q Okay.  
10 A When I see that term, the meaning which I give  
11 that term -- I do not know whether that is the  
12 meaning given that term in this document. But  
13 when I use the term, it refers essentially to  
14 equality of minority and non-minority populations  
15 or at least at 50 percent.  
16 Q I can't resist probing this a little bit. What  
17 case did you conjure the term and that got picked  
18 up by the court?  
19 A It's not a case. It is in my -- it is an article  
20 published in roughly 1988 in the law and policy --  
21 I think it's Law and Policy Review and may be Law  
22 and Politics Review co-authored by myself and  
23 others. And I do believe that it had an effect on  
24 the voting rights case law in the 1990 round of  
25 redistricting. Beyond that I would not say and I

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1 have written other things subsequently which  
2 supersede that.  
3 Q Interesting anecdote. Thank you.  
4 A Uh-huh.  
5 Q Let's go to Paragraph 23. "Over the course of the  
6 last decade, the political electoral conduct of  
7 Latino voters on Milwaukee's south side in the  
8 vicinity of the recently reapportioned 8th and 9th  
9 assembly districts demonstrates that the Latino  
10 community is politically cohesive." You already  
11 testified that you agree with that statement.  
12 A I testified that I agree with that statement with  
13 respect to District No. 8 because I've reviewed  
14 elections in District No. 8 in which the Latino  
15 community has supported an Hispanic candidate.  
16 District No. 9 is less clear because I have no way  
17 of judging whether or not the non-Hispanic  
18 incumbent in place is a candidate of choice of the  
19 Hispanic community.  
20 Q Do you know who that is?  
21 A I don't know by name. No, I do not.  
22 Q Let's go to Paragraph 24. "Over the course of the  
23 last decade the political and electoral conduct of  
24 non-Latino Caucasian voters on Milwaukee's near  
25 south side in the vicinity of the recently

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1 reapportioned 8th and 9th assembly districts  
2 demonstrates the existence of a pattern of  
3 ethnically polarized voting in that said  
4 non-Latino Caucasian voters usually vote as a  
5 block in the absence of special circumstances to  
6 defeat the preferred candidates of the Latino  
7 voters."  
8 Now, I guess the question I will ask about  
9 that -- I assume that you will say you disagree  
10 with Paragraph 24, correct?  
11 A As worded I do.  
12 Q As worded. Are you able to change the wording of  
13 Paragraph 24 so that you agree to it?  
14 A I think the answer to that is no since my  
15 declaration and my review of the data indicates  
16 that in the districts which provide the best  
17 evidence on patterns of racially polarized voting  
18 in Assembly District 8 there essentially is no  
19 racially polarized voting; that in Assembly  
20 District 9 there is no data on political cohesion  
21 or racial block voting patterns that I have  
22 actually seen presented by an expert, and,  
23 furthermore, that the data that is otherwise  
24 presented by Dr. Mayer on general patterns of  
25 racially polarized voting in the city is not data

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1 which is restricted to the particular area that is  
2 the area in question. Indeed, the data that he's  
3 providing does not show clear evidence of legally  
4 significant racially polarized voting because in  
5 three of the five contests that he examines the  
6 Latino candidate of choice actually won.  
7 Q Now, I'm going to back up a little bit here. You  
8 were hired in late November, correct?  
9 A I was hired, yes, in late November. That's  
10 correct.  
11 Q And this was before the initial reports were due,  
12 the reports that were due on December 14th?  
13 A Yes. That's correct.  
14 Q And you knew about that deadline?  
15 A Yes. That was the deadline for initial reports  
16 for non-rebuttal witnesses.  
17 Q So you were hired to be a rebuttal witness to  
18 address principally this question of racially  
19 polarized voting, correct?  
20 A Yes. That is correct. To general issues having  
21 to do with minority representation in Milwaukee.  
22 Q And as far as my case -- I represent Voces de la  
23 Frontera. As far as my case is concerned, you  
24 were hired to rebut the allegations made in the  
25 complaint with regards to racially polarized

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1 voting?  
2 A Again, that is certainly not how I would  
3 characterize the way in which I'm hired. I'm  
4 hired to provide testimony on a factual basis for  
5 particular claims that are made and to develop my  
6 own independent expert judgments about the  
7 questions that are at legal issue at trial to the  
8 extent that political science testimony is  
9 relevant to those questions.  
10 Q I think if we review the transcript the words that  
11 you uttered were that you were retained to address  
12 as a rebuttal witness the issues dealing with the  
13 racial polarization aspect of the case.  
14 A Yes. That is correct. I believe that if you will  
15 review the form of the question which you asked  
16 me, the question you asked me was whether I was  
17 hired to rebut. I take that in the ordinary  
18 language meaning that I was hired with the purpose  
19 of denying expert witness reports from the other  
20 side. It is that form of the question to which I  
21 took exception in answering that yes I was hired  
22 as a rebuttal witness. The nature of my testimony  
23 is to be independently determined by me.  
24 Q Well, I guess the question I have was why -- you  
25 could have done a racially -- a priori or de novo

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1 you could have done an analysis of racially  
2 polarized voting conduct in the vicinity of the  
3 8th and 9th districts, de novo yourself, correct?  
4 A Yes. I could have been hired to do that. That is  
5 correct.  
6 Q You present yourself as a person who is competent  
7 and qualified to conduct such an analysis,  
8 correct?  
9 A That is correct.  
10 Q And you communicated to that counsel, that you  
11 were qualified and competent to conduct an  
12 analysis of racially polarized voting in  
13 Milwaukee, right?  
14 MR. HODAN: I'm going to object to  
15 any questions regarding conversations between  
16 Mr. Grofman and our firm as being protected  
17 by the attorney-client privilege pursuant to  
18 Rule 26 which you're well aware of the  
19 amendments, Counsel. If you have another  
20 question --  
21 MR. EARLE: This is about his  
22 qualifications which I'm free to ask him  
23 about.  
24 MR. HODAN: Ask him about his  
25 qualifications then rather than asking him

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1 about conversations with counsel.  
2 Q If you had been asked by counsel to do a de novo  
3 analysis of racially polarized voting in  
4 Milwaukee's Latino community, you would have been  
5 prepared to do that, correct?  
6 A Yes. That is correct.  
7 Q And then we would have had a report on  
8 December 14th that Ken Mayer could have filed a  
9 rebuttal to, correct?  
10 A There's a lot of ifs there, but if you -- in the  
11 hypothetical that I had been asked and I had the  
12 time and it was prepared, yes, there would have  
13 been a potential for a rebuttal.  
14 Q And so instead what you did was you constrained  
15 your activity to review Ken Mayer's work, correct?  
16 MR. HODAN: Object to form.  
17 MR. EARLE: That's enough.  
18 MR. HODAN: You can go ahead and  
19 answer.  
20 A The choices of what an expert witness is asked to  
21 comment on or to prepare expert witness reports on  
22 is a matter for the attorneys who are involved in  
23 hiring the expert witnesses to instruct the expert  
24 witness on. Basically I was hired to do a  
25 rebuttal and that's what I did.

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1 Q Before we get to Ken Mayer's report with regards  
2 to the racially polarized voting component of it,  
3 I want to go back and cover one thing that I  
4 thought I heard you testify to in response to Mr.  
5 Poland. Correct me if I'm wrong here, but I  
6 thought I heard you say that your reading of  
7 Bartlett is that a minority which is not  
8 statistically large enough to constitute a  
9 majority can or may be able to show or satisfy  
10 prong one in coalition with other minorities.  
11 A No. That is not what I said.  
12 Q Okay. Explain that to me. Explain to me what you  
13 thought you were saying because I think I  
14 interpreted it differently.  
15 A Okay. I distinguish and I believe that the  
16 supreme court does distinguish two things. What  
17 is the threshold test for a plaintiff group to be  
18 able to bring a Section 2 voting rights claim and  
19 there I believe that the court set a bright line  
20 test.  
21 Q Okay.  
22 A I also believe that the court stated -- again, I  
23 leave it to the lawyers to argue whether this is  
24 dictum or whether this is actually binding law --  
25 that a jurisdiction which is subject to a

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1 Section 2 lawsuit where the plaintiffs have met  
2 their Section 2 bar may then seek to rebut the  
3 claim that it has violated Section 2 by offering  
4 as defense that the district which has been  
5 created is a district which even though not a  
6 majority district is a district which has a  
7 realistic opportunity to elect. And you have that  
8 mapping in case happening in cases like Bartel  
9 (sic) in the past.  
10 Q Okay. That's clear. Thank you.  
11 A Uh-huh.  
12 Q I've now postponed this racially polarized voting  
13 thing a little bit more. We will come back to  
14 Paragraph 24. Let's go to Paragraph 25.  
15 "Milwaukee's Latino community bears the  
16 socioeconomic effects of historic discrimination  
17 in employment, education, health and other areas  
18 and their depressed socioeconomic status hinders  
19 their ability to participate in the electoral  
20 process on an equal basis with other members of  
21 the electorate."  
22 A While I've not reviewed that data specifically for  
23 this decade, my general view is that that's an  
24 accurate statement.  
25 Q That that's an --

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1 A Accurate statement.  
 2 Q Number 26, "The State of Wisconsin employs voting  
 3 practices and procedures such as photographic  
 4 identification requirements which will  
 5 disproportionately affect Latino citizens and  
 6 thereby further the ability of Latino citizens to  
 7 participate in the electoral process on an equal  
 8 basis with other members of electorate."  
 9 A Here I simply would say that I have no opinion  
 10 because I have not reviewed evidence on the  
 11 consequences for Latino voters of Wisconsin state  
 12 laws that may affect registration requirements.  
 13 Q So I can rest easy in confidently knowing that you  
 14 will not be presenting testimony contrary to  
 15 Paragraph 26 at trial, correct?  
 16 A That is correct.  
 17 Q We will stop there.  
 18 MR. HODAN: Do you want to take a  
 19 break?  
 20 THE WITNESS: No. That's okay.  
 21 Q Before we get to the racially polarized, I just  
 22 want to do one other quick thing here. You didn't  
 23 do any work in the area of voter turnout, correct?  
 24 A That's correct.  
 25 Q Did you --

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1 A Except, again, I repeat -- I apologize for  
 2 interrupting you. Except insofar as I reviewed  
 3 some data that was provided by Dr. Mayer.  
 4 Q Did you review Dr. Gaddie's testimony in his  
 5 deposition?  
 6 A I did but only very -- relatively cursorily  
 7 because most of it was concerned with matters that  
 8 were not directly relevant to the things I was  
 9 testifying about.  
 10 Q I thought I gleaned from your prior testimony here  
 11 today that you agree with the statement that  
 12 there's ample evidence to support the proposition  
 13 that voter turnout in the Latino community is  
 14 significantly lower on a comparative basis to that  
 15 of non-Latino voters.  
 16 A Again, subject to the proviso that we be precise  
 17 as in comparison to what. If we do the comparison  
 18 in terms of Hispanic population or Hispanic voting  
 19 age population vis-à-vis white population or white  
 20 voting age population, yes, I agree.  
 21 Q And if the comparison were Hispanic voting age  
 22 population with white voting age population, you  
 23 would agree with that?  
 24 A As I previously stated, yes.  
 25 MR. EARLE: Let's mark this.

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1 (Exhibit No. 144 marked for  
 2 identification)  
 3 Q This is the prettiest of all of the exhibits,  
 4 isn't it, in terms of the coloring?  
 5 A Uh-huh.  
 6 Q Professor Grofman, I will represent to you that  
 7 the bright yellow lines on this map represent the  
 8 8th assembly district to the right and to the left  
 9 the 9th assembly district as configured by Act 43.  
 10 I will also represent to you that in the northern  
 11 part of the 8th assembly district and the 9th  
 12 assembly district in kind of a tan-orange color --  
 13 that's the old 8th assembly district --  
 14 A I'm sorry --  
 15 Q -- prior to the reapportionment.  
 16 A I'm sorry. Say that one again. I'm sorry. I  
 17 couldn't follow.  
 18 Q This light tan in the northern area, the northern  
 19 half of the 8th assembly district -- that's an  
 20 area that was represented by -- that's the area  
 21 that elected JoCasta Zamarripa to office; okay?  
 22 A Okay.  
 23 Q The area that's tan-brown below it is the old 9th  
 24 assembly district, and that is the area that has  
 25 elected Joshua Zepnick to office; okay? And the

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1 area to the east of the 8th assembly district that  
 2 is kind of a brighter orange is the area that goes  
 3 up into the east side that's represented by  
 4 John Richards. There's one very significant ward  
 5 from that area that's adopted into the new 8th;  
 6 okay?  
 7 A Yes.  
 8 Q I will represent to you that the southern areas of  
 9 the 8th assembly district that came from the 9th  
 10 above that yellow line there is a neighborhood  
 11 area called Wilson Park.  
 12 A Above which yellow line? I'm sorry.  
 13 Q Right here. Can you see where I'm pointing?  
 14 Those areas of the old 8th that are in the --  
 15 strike that. Those areas from the old 9th that  
 16 are now in the new 8th.  
 17 A Yes.  
 18 Q Most of that in the southern part there is Wilson  
 19 Park.  
 20 A Okay.  
 21 Q I will represent to you that in that area the  
 22 percentages of Latino community are substantially  
 23 lower than in the northern areas that previously  
 24 elected JoCasta Zamarripa; okay?  
 25 MR. HODAN: Are we building up to a

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# VIDEOTAPE DEPOSITION OF BERNARD N. GROFMAN, Ph.D. 2/3/2012

1 question?

2 MR. EARLE: We sure are.

3 MR. HODAN: I assume these are all

4 hypotheticals.

5 MR. EARLE: Yes. They are

6 hypotheticals.

7 Q Now, Doctor, I see that you don't have glasses on.

8 Are you able to read the numbers on this exhibit?

9 A Actually, I'm nearsighted so that I'm actually

10 better able to read the numbers than I am to see

11 things at a distance.

12 Q So you would agree -- I'll represent to you that

13 those numbers are the turnout numbers in the --

14 those are the turnout numbers in the 2008

15 presidential election.

16 MR. HODAN: Which numbers are

17 you --

18 Q The lower number is the turnout in the 2008

19 presidential election. All right? The upper

20 number is the -- let me see -- the top number is

21 the ward population, the population for that ward.

22 If you would take a moment to look at that. I

23 just want to make sure that you would agree with

24 me that the turnout numbers in those areas in the

25 new 8th assembly district under Act 43 that came

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1 from the prior old Assembly District No. 9 are

2 substantially higher than the turnout numbers from

3 the old 8th assembly district that remain in the

4 new 8th assembly district with the exception of

5 Ward 201.

6 A Again, repeat. The upper number is --

7 Q The upper number is the total population of the

8 ward.

9 A Uh-huh.

10 Q These are pre-2010 reapportioned wards. These

11 were are the old wards. The lower number is the

12 actual voter turnout in the 2008 presidential

13 election.

14 A Yes.

15 Q So we agree that the wards that have been imported

16 into the new 8th from the 9th, the old 9th, have a

17 higher turnout than the wards that came from the

18 old 8th, right, as a general matter with the

19 exception of Ward 201?

20 A Yes. That appears to be correct. Let me just

21 check a couple things here. There are, again, a

22 few what look like partial exceptions, and those

23 partial exceptions appear to be located in the

24 areas of the old 9th which are the most heavily

25 Hispanic in their character like C137, C138, C140

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1 where, again, there is a fairly substantial

2 discrepancy between the turnout proportions of the

3 voters in what was old 9 which is more nearly

4 comparable to or indeed in some cases lower than

5 the proportions of the turnout in old 8. So, for

6 example, if you were to compare District C137 with

7 District C134 --

8 Q Let me catch up with you here. 137 I see. Okay.

9 A So C137 with C134. Those look like they are --

10 actually, C137 has a lower turnout than, for

11 example, C134 has. Similarly, if you were to

12 compare C135, which is in -- by the coloration

13 that you have it's actually in old --

14 Q You're talking about the 9th assembly district.

15 A I'm talking about the 9th.

16 Q My questions were directed at the 8th. What I'm

17 concerned about here in this lawsuit is the

18 dynamic that faces the new 8th in terms of the

19 prospects of the Latino community being able to

20 elect the candidate of its choice in this new

21 district as reconfigured. Almost half of the new

22 8th assembly district is imported from the old

23 9th; isn't that correct?

24 A Yes.

25 Q And if I represented to you that the division line

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1 between the 8th and 9th under Act 43 goes down

2 16th Street, right down the middle of the main

3 commercial district of that neighborhood --

4 A I'm sorry. Where would 16th Street -- is it a

5 yellow line? Is it a straight yellow line?

6 Q The long straight yellow line at the top there is

7 16th Street. When it gets down -- it jogs over a

8 little bit and takes out of the 8th assembly

9 district El Ray Supermarket and the 16th Street

10 Community Health Center, major landmarks of the

11 Latino community and 16th Street, and takes them

12 over into the 9th and then comes back out to 16th

13 Street again. Okay. There are community

14 leaders -- I will also represent to you that there

15 are community leaders who are very concerned that

16 this divides the community by taking away a very

17 large Latino, heavily Latino portion of the

18 population, and is substituting an area that is

19 more predominantly white with higher turnouts and

20 they fear the consequences electorally for the

21 Latino community. Those are things that would be

22 useful for you to know, correct?

23 A Yes. Turnout numbers are certainly relevant to my

24 evaluations.

25 Q And if you were going to do a full assessment of

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1 the impact of Act 43 on Milwaukee's Latino  
2 community in the vicinity of the old 8th, you  
3 would want to know all of those things, correct?  
4 MR. HODAN: Object to the form.  
5 You can go ahead.  
6 Q By those things I mean the nature of the business  
7 district and its role in the community, the extent  
8 to which people in that area self-identify as  
9 members of the Latino community as opposed to  
10 self-identifying themselves as members of another  
11 community.  
12 MR. HODAN: Object to form.  
13 Q That would be important, correct?  
14 MR. HODAN: Object to form.  
15 Go ahead.  
16 A There are elements of the data that I regard as  
17 informative. The question, however, remains  
18 whether or not the district as configured that is  
19 8 provides a realistic opportunity to elect that  
20 is equal to that of non-minority whites, and then  
21 the question of whether or not there are  
22 consequences for increasing the minority  
23 proportion, Hispanic minority proportion, in  
24 District No. 8 vis-à-vis the potential viability  
25 of District 9 as a district. Those are the

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1 questions that I've tried to understand.  
2 Q Now, Ken Mayer reports that he can draw an  
3 assembly district in the vicinity of the 8th that  
4 has a Latino CVAP, citizen voting age population,  
5 in the vicinity of 60 percent.  
6 A Yes.  
7 Q You don't doubt that, correct?  
8 A I don't doubt that he can draw one that is in the  
9 neighborhood of 60 percent. However, there is no  
10 map which is shown which indicates the  
11 consequences for District 9 of drawing the  
12 district that he proposes to draw.  
13 Q In the event that the consequences of the drawing  
14 of the Act 43 8th assembly district is to reduce  
15 the Latino CVAP to a threshold that is overwhelmed  
16 by the turnout of the new white voters who are  
17 imported from the 9th in the southern areas of the  
18 new 8th, that would be a matter of significant  
19 concern for your totality of the circumstances  
20 analysis, correct?  
21 A Yes. That would be correct. For totality of  
22 circumstances analysis that would be correct.  
23 Q Did the attorneys representing the State present  
24 you with information about that aspect of this  
25 case?

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1 MR. HODAN: Object to form.  
2 A The answer is that I did not request such  
3 information because my view was that the data  
4 available to me allowed me to reach a conclusion  
5 about the realistic opportunity of minority voters  
6 to elect a candidate of choice in District 8 given  
7 its racial demography and given the minority and  
8 Hispanic population and voting age population and  
9 estimated citizen voting population in that  
10 district and also given the critical fact that  
11 this is an election which is a two-stage election  
12 in which the critical question is the ability of  
13 the Hispanic community to elect a candidate of  
14 choice in the democratic primary.  
15 Q Would you dispute Dr. Mayer's assertions that the  
16 old 8th assembly district on the eve of  
17 reapportionment in terms of the old 8th assembly  
18 district with the 2010 data applied to it -- that  
19 that district -- that Act 43 reduced the  
20 concentration of or the percentage of Hispanic  
21 citizens of voting age in the population?  
22 MR. HODAN: Object to form.  
23 Just so we're clear, which district are  
24 you talking about?  
25 MR. EARLE: I'm talking about the

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1 8th assembly district. I'll rephrase the  
2 question, and perhaps that will resolve the  
3 form problem.  
4 Q Do you dispute Dr. Mayer's assertion that the old  
5 8th assembly district as it stood on the eve of  
6 reapportionment in terms of the 2010 census  
7 data -- that the Hispanic citizen voting age  
8 population percentage of that district was reduced  
9 by Act 43?  
10 A Yes and no. The answer to that is of course if  
11 you are dealing with percentages that is correct.  
12 If, however, you are dealing with raw numbers  
13 relative to proportion of an ideal sized district,  
14 the answer to that is no.  
15 Q Because we needed to add 2,000 plus citizens for  
16 equalization purposes.  
17 A You needed to add 2,000 plus persons for  
18 equalization purposes.  
19 Q But you could have -- a demographer could have  
20 added 2,000 plus, whatever the required number  
21 was, of additional persons in a way that  
22 maintained that population threshold in terms of  
23 the Latino citizen of voting age population  
24 percentage, correct?  
25 A Yes, provided that those persons were removed from

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1 some other district such as an adjacent  
2 District 9.  
3 Q You have before you already Exhibit 134.  
4 A Yes.  
5 Q You reviewed this?  
6 A Yes.  
7 Q When did you review this?  
8 A I was provided deposition testimony by Dr. Mayer  
9 and was informed that there was a question about  
10 whether or not this data could in fact be taken  
11 into account because of the time of receipt.  
12 Nonetheless, I was given this data, and, because I  
13 was given this data, I looked at it.  
14 Q And whether or not -- what happens to this data is  
15 for the lawyers to argue with the judge if the  
16 defendants decide that that's what they want to  
17 do. We're going to talk about the substance of  
18 it. You would agree that your major criticism of  
19 Dr. Mayer's analysis of racially polarized voting  
20 in the Latino community in Milwaukee was that he  
21 didn't use what you called the best evidence,  
22 correct?  
23 A Yes.  
24 Q Because he looked at races that were larger in  
25 their dimensions than the electoral races in the

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1 target area, correct?  
2 A Yes. That's correct.  
3 Q So what Dr. Mayer then did was -- after he read  
4 your report was he said Okay. I'll check with the  
5 available races. And these I guess are still  
6 exogenous races, but they focus on electoral  
7 conduct in those specific areas, correct?  
8 A Yes.  
9 Q So they're closer --  
10 A I'm sorry. These are within which areas? I'm not  
11 sure myself what this exhibit shows.  
12 Q The county supervisor in county supervisor 12 is  
13 basically analogous to the 8th assembly district,  
14 the old 8th assembly district.  
15 MR. HODAN: You want him to assume  
16 that?  
17 MR. EARLE: I do.  
18 A I don't know this of my own knowledge.  
19 Q I understand. And that the alderman in the 12th  
20 aldermanic district -- it's a smaller district,  
21 but it's basically within the old 8th assembly  
22 district.  
23 MR. HODAN: Again, an assumption.  
24 As long as we all understand that these are  
25 assumptions you're asking him to make, that's

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1 fine.  
2 MR. EARLE: Right.  
3 Q So I guess let's back up. Do you have a criticism  
4 with how it was that Dr. Mayer applied the  
5 statistical analysis to the data from these  
6 elections?  
7 A My understanding is that Dr. Mayer is using  
8 Spanish surname counts of registered voters to do  
9 analyses or in some cases he's doing analyses --  
10 let's see. Citizenship adjusted. In this case  
11 he's doing -- in these analyses he's doing Voting  
12 Age Population 8 and 9, Combined 8 and 9, Latino  
13 Voting Age Population. I'm honestly not sure what  
14 the difference is between 8 and 9 Together VAP and  
15 8 and 9 together Latino VAP because presumably the  
16 only thing we're interested in is Latino VAP. So  
17 I really don't know exactly what it is that's  
18 being distinguished here. Then I'm assuming that  
19 the Latino VAP is citizenship adjusted VAP, but I  
20 honestly don't know where he's getting this from  
21 because you would have to be doing this at some --  
22 in order to be able to do ecological inference,  
23 you need to be doing this at a very low level of  
24 aggregation. You need to be doing this at the  
25 block level or some level that has lots and lots

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1 of different units in it in order to be able to  
2 run these data. Since the citizen voting age  
3 population is not actually available at these low  
4 levels of aggregation, I'm not sure what he's  
5 doing here.  
6 Q That's a question you would want to know?  
7 A Yes. It's a question I would want to know.  
8 Q How important to your criticism of this is your  
9 assumption that he was using Spanish surname data?  
10 A I'm sorry. It's not because this chart is labeled  
11 Voting Age Population and is also labeled  
12 Citizenship Adjusted Latino Voting Age Population,  
13 so, therefore, in reading this chart as compared  
14 to I believe it's Tab 8 in his declaration, in his  
15 report, this data seems to be voting age and  
16 citizen voting age population of some kind that  
17 has been used to generate these estimates.  
18 Q So the Spanish surname question is not important  
19 at all?  
20 A Not for this data, no.  
21 Q And do you have any criticisms of Dr. Mayer's  
22 report with regards to other use of Spanish  
23 surname data?  
24 A Yes. The problems with Spanish surname data is  
25 that like anything else they are estimates.

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1 Because they are, just as there are in criminal  
2 trials, two ways to go wrong, convicting the  
3 innocent and freeing the guilty, there is type one  
4 error and type two error with respect to estimates  
5 of Spanish surnames; that is to say you can infer  
6 that someone who has a Spanish surname is in fact  
7 of Spanish heritage and be wrong and then you can  
8 infer that someone who does not have a Spanish  
9 surname is not of Spanish heritage and you can  
10 also be wrong in that way. So there are two  
11 different ways to go wrong in doing Spanish  
12 surname matching. And the Spanish surname  
13 matching is an estimate. It is, I would agree  
14 with Dr. Mayer, reliable at high levels of  
15 aggregation, for example, at the county because  
16 then what tends to happen is that the two types of  
17 error essentially cancel out or leave only a  
18 relatively small residual. One type of error  
19 tends to overestimate Hispanic population.  
20 Another type of error tends to underestimate  
21 Hispanic population. So when you have both kinds  
22 of error taking place in an estimation process,  
23 the net effect is going to be reduced because the  
24 errors go in opposite directions. That is true  
25 for data at the county level. I do not agree with

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1 Dr. Mayer that that assumption applies when you  
2 use Spanish surname data below the level of large  
3 scale units. In particular what will happen with  
4 Spanish surname data is that in areas that are  
5 highly Hispanic some individuals who do not have  
6 Spanish surnames are likely to in fact regard  
7 themselves as Spanish heritage perhaps by  
8 marriage; that is to say descent. So they may  
9 have a last name which is not necessarily a  
10 Spanish surname and therefore is not picked up in  
11 the Spanish surname count.

12 The other side of the coin is that in areas  
13 which are heavily non-Hispanic some of those who  
14 would appear to be Hispanic based on their surname  
15 are not in fact Hispanic because they do not  
16 identify, self-identify, as Hispanic. That's  
17 actually the critical distinction. The way one  
18 knows whether someone is or is not Hispanic is a  
19 matter of self-choice as registered in how one  
20 fills out the census form.

21 Q I guess with respect to -- I have to confess to  
22 you, Professor Grofman, that if I were a student  
23 of yours and you were trying to teach me the  
24 ecological inference process I would surrender and  
25 allow you to give me an F at the start of the

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1 first day. I don't fully understand the  
2 statistical mechanics of this process. But I  
3 guess what I would really want to understand here  
4 is at trial what you're going to say about  
5 Exhibit 134, if you do have criticisms of this  
6 what those criticisms would be and what you think  
7 the significance of those criticisms are. So if  
8 you would please tell me.

9 A The main criticisms are not really criticisms. I  
10 actual find this by and large to be very helpful  
11 in making the point that I made previously in my  
12 response to earlier questions that there is a very  
13 substantial difference or can be a very  
14 substantial difference between non-partisan  
15 elections and partisan elections. What you see  
16 here, if you look at the second page of this  
17 exhibit and the best column to examine which is  
18 the column that is labeled Kings EI, that would be  
19 the second column on the second page, what you see  
20 there is that if you go down the line regardless  
21 of which particular estimate you wish to use you  
22 will see numbers that are remarkably close with  
23 one exception to 50 percent; that is to say what  
24 it shows is that the level of Hispanic political  
25 cohesion in non-partisan contests is relatively

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1 low. There is barely a case to be made that there  
2 is an actual Hispanic candidate of choice in some  
3 of these elections. In particular, for example,  
4 in Aldermanic 12, if you look at the data in that  
5 election, the single estimates of the proportion  
6 of Hispanics supporting the Hispanic candidate in  
7 that Aldermanic 12 election in 2008 is  
8 46.9 percent, 46.9 percent and 47.1 percent; that  
9 is to say less than a majority. Or, to put it  
10 another way, there is not an Hispanic candidate of  
11 choice in that aldermanic election. There's no  
12 candidate who receives the majority of support  
13 from the Hispanic community. So, therefore, what  
14 we're seeing here is a pattern in which, as I've  
15 stated in my earlier testimony, there is a  
16 dramatic difference or can be a dramatic  
17 difference between the ability of minorities to  
18 win office in elections that are non-partisan in  
19 which there is not a partisan cue on the ballot to  
20 trigger support or to trigger support prior to the  
21 election by those who wish to elect democrats and  
22 partisan elections. Because if you compare these  
23 numbers to the one partisan election that we look  
24 at, you will see that the partisan election is  
25 going to be higher.

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1 Q Show me. Show me.  
 2 A If we turn to Dr. Mayer's report -- let me find it  
 3 again. I have to find all of these different  
 4 pieces of paper. I have it here. It's just a  
 5 question of finding it. Let's just go to tab --  
 6 this is going to be 10. I think it's Tab 6.  
 7 Let's just double-check. Tab 7. Exhibit 7.  
 8 MR. POLAND: Give us just a second  
 9 here, Professor.  
 10 THE WITNESS: I'm glad I'm not the  
 11 only one who is buried in the paper. That  
 12 was not a response to a question but it was  
 13 an acknowledgement of the fact.  
 14 Q Which tab? What are you looking at?  
 15 A I'm looking at Exhibit 7.  
 16 Q Exhibit 7. Here it is. Okay.  
 17 A There's only one clear partisan contest here.  
 18 Q The Jennifer Morales/Roberta Darling?  
 19 A Exactly. And you can see that you've got Latino  
 20 vote up around 89.2 percent. You have also got  
 21 very high Latino voting for the Latino candidate  
 22 in some of these other contests which were the  
 23 ones that Dr. Mayer chose to analyze in his first  
 24 round of analyses and these are ones which show  
 25 high levels thus allowing him to demonstrate that

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1 there are dramatic differences between minority  
 2 and non-minority voting populations when you  
 3 consider the longer list of elections including  
 4 the elections we have just been looking at in  
 5 Exhibit 1025 the actual differences between  
 6 minority and non-minority candidate support from  
 7 Latino and non-Latino communities do not loom as  
 8 large as they do in some of these elections. So  
 9 there is some evidence, admittedly very limited  
 10 because there's only one election, that we can  
 11 have partisan elections generating a high level of  
 12 minority political cohesiveness far higher than  
 13 the level of political cohesiveness in most of the  
 14 non-partisan elections that Dr. Mayer has  
 15 analyzed. That's the first reason for me to find  
 16 information that is relevant to my previous  
 17 conclusions and which operates to buttress rather  
 18 than rebut my previous conclusions about the key  
 19 differences between partisan and non-partisan  
 20 consequences.  
 21 The other thing that I would say that I was  
 22 struck by in this data is the extent to which even  
 23 in these non-partisan elections there is a  
 24 relatively non-trivial level of non-minority  
 25 support, or in this case white support, for the

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1 minority candidate in what are single stage  
 2 partisan elections.  
 3 Q Could you point that out to us.  
 4 A Sure. If you turn to the second -- if you turn to  
 5 the fourth column of the second page of Exhibit  
 6 1025, then what you will see is that the numbers  
 7 that are reported there, 38.6 percent,  
 8 36.4 percent, 38.5 percent, 43.2 percent, 29.5 --  
 9 that's the only real low number there. That's a  
 10 circuit court election. Let's see. Is that a  
 11 circuit court election? That's a particular  
 12 circuit court election. And then 53 percent,  
 13 39.8 percent. So what you're seeing here is  
 14 something like 38, 39 percent support from the  
 15 white community as labeled here, from the  
 16 non-Hispanic white voters according too  
 17 Dr. Mayer's testimony as shown in this report, for  
 18 the Hispanic candidate. I draw from this the  
 19 conclusion, based on my own general knowledge,  
 20 that if it is possible to generate this level of  
 21 support in a non-partisan contest from the white  
 22 community basically in a non-partisan election  
 23 that it should be possible to generate higher  
 24 levels of white support from a partisan election  
 25 in which there is a democratic cue because the

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1 bulk of the voters in that district and certainly  
 2 the bulk of the overwhelming proportion of the  
 3 population are going be democrats. But there are  
 4 republicans there. Insofar as there are  
 5 republicans there, this influences the possibility  
 6 for an Hispanic candidate to win the democratic  
 7 primary because the republicans, even if there may  
 8 be very high turnout whites, primarily will be  
 9 very high turnout whites, are not going to be  
 10 present in the democratic primary.  
 11 Q Let me make sure I understand this. So what  
 12 you're saying is that -- an aspect of what you're  
 13 saying is that the democratic primary in a  
 14 partisan race in the 8th assembly district, which  
 15 is a partisan race, is the key test for the Latino  
 16 candidate because if they can get past the  
 17 democratic primary, then democratic partisanship  
 18 will carry them in a regular election. Is that  
 19 basically what you're saying?  
 20 A Yes. That is exactly what I'm saying.  
 21 Q By the same token, none of that partisanship help  
 22 will occur in the primary itself because there it  
 23 would be -- to the extent that it would be Latino  
 24 candidate versus white candidate, partisanship  
 25 would not assist the Latino candidate at all?

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1 A No.  
2 Q And the racial polarization would be the factor,  
3 right?  
4 A No. Actually, that's not quite right. There I  
5 have to give a yes and a no answer.  
6 Q You usually have a more important one and a less  
7 important.  
8 A Yes. Actually, in this case they're roughly  
9 equally important.  
10 Q Go ahead.  
11 A The yes part of the answer is certainly the  
12 polarization matters. The no part of the answer  
13 is that what also matters is who is voting in the  
14 democratic primary and there the question is how  
15 many of the whites are republican because  
16 presumably those whites are not going to be voting  
17 in the democrat primary.  
18 Q So it would be really important for you to know to  
19 the extent that there's republican voting conduct  
20 in the 8th assembly district as drawn by Act 43,  
21 correct?  
22 A Yes.  
23 Q Have you looked at that?  
24 A I've only looked at that in the most general of  
25 senses in that it is my belief that there are some

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1 republican voters in Milwaukee County and even  
2 republican voters in the areas in question. I've  
3 not looked in any detail at that. That may well  
4 be a question -- that certainly is a question that  
5 is potentially relevant. It is not a question  
6 that was explored in Dr. Mayer's data, and,  
7 therefore, was not directly explored in my  
8 rebuttal.  
9 Q But it's relevant to your opinion here about --  
10 A Yes.  
11 Q -- this dynamic of the primary and general  
12 election.  
13 A Yes. Exactly.  
14 Q So we can look -- a judge could look at a chart  
15 showing democratic and republican turnouts in  
16 contested races.  
17 A Or democratic and republican registration or  
18 democratic and republican votes for a major  
19 statewide race. The court could presumably take  
20 judicial notice of those facts, yes.  
21 Q I got it.  
22 MR. HODAN: Is that one of the  
23 things that we will stipulate to?  
24 MR. EARLE: What?  
25 MR. HODAN: Election results. I'm

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1 being facetious in terms of the pretrial that  
2 we have got to do.  
3 MR. EARLE: Okay.  
4 MR. POLAND: Cross that bridge when  
5 I come to it. That's tomorrow.  
6 MS. LAZAR: Would this be a good  
7 time to take a short break?  
8 MR. EARLE: This would be a good  
9 time to take a short break.  
10 MS. LAZAR: Thank you.  
11 (Recess)  
12 Q Is it significant to you to have any information  
13 about the composition of the Latino community in  
14 Milwaukee?  
15 A Beyond demographic data and --  
16 Q National origin data.  
17 A I'm not sure of the answer. Honestly, I'm not  
18 sure of the answer to that question. If there  
19 were dramatically different groups of substantial  
20 population and there was evidence in the record  
21 that those groups were not politically cohesive,  
22 then perhaps yes. But there's been no testimony  
23 along those lines in any of the expert witness  
24 declarations that I'm aware of. So my general  
25 response would be no.

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1 Q I ask the question because you made an observation  
2 about, for example, Cubans --  
3 A Yes.  
4 Q -- in Florida having different voting patterns  
5 than Latinos in other parts of country.  
6 A Again, I don't want to give a long answer, but  
7 basically --  
8 Q I appreciate that.  
9 A I've looked at other jurisdictions where there are  
10 Latino groups of different ethnic origin, and,  
11 generally speaking, with the possible exception of  
12 Cubans, and even then only Cubans in Florida, the  
13 patterns particularly in terms of support for the  
14 democratic party are very, very similar.  
15 Q You would agree that, for example, in the Midwest  
16 you see, unlike other parts of the country, Latino  
17 communities that have both substantial numbers of  
18 Puerto Ricans and Mexicans in the same community?  
19 A Certainly that's true in Chicago. That's where I  
20 know the data. I don't know the data in  
21 Milwaukee.  
22 Q If there were a significant Puerto Rican community  
23 in Milwaukee on a near south side, would that be  
24 important to you?  
25 A Essentially no because the only real piece of

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1 information that that provides is that this is a  
 2 community that is likely to be a U.S. citizen.  
 3 But that would already be taken into account in  
 4 the data analyses that I've done.  
 5 Q I guess I want to make sure I understand. What is  
 6 your response to the question about whether you  
 7 can perform a racially polarized voting analysis  
 8 in a race where there are only Latino candidates?  
 9 A My view is that in a race where there are only  
 10 Latino candidates you can still look to see what  
 11 happens in the general election where there may in  
 12 fact not be Latino candidates. So in a primary  
 13 the fact that there are only Latino candidates is  
 14 indicative of the inability of communities other  
 15 than the Hispanic community to mount a viable  
 16 challenge to the Latino candidate. It is not  
 17 strictly speaking racially polarized voting  
 18 analysis because there's not a candidate of more  
 19 than one race, but it is nonetheless I would say  
 20 as informative, maybe even more informative of the  
 21 viability of the Latino community in terms of its  
 22 ability to elect candidates of choice.  
 23 Q Let's break it into two parts. For purposes of  
 24 the third prong versus your totality of the  
 25 circumstances analysis.

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1 A Yes.  
 2 Q Is your answer different?  
 3 A Well, my answer would be different because now  
 4 we're talking about is the level of racially  
 5 polarized voting such that the candidate of  
 6 choice, the minority community, regularly lose  
 7 since that's the third prong of *Gingles*. The data  
 8 from previous District 8 is that the answer to  
 9 that question is no there isn't racially polarized  
 10 voting.  
 11 Q So you would say that you can do a racially  
 12 polarized voting analysis in the absence of  
 13 competing candidacies of Latino versus non-Latino?  
 14 A Yes. Because in this instance we really -- the  
 15 fact that we have no non-Hispanic white candidate  
 16 contesting even in most cases the general election  
 17 is indicative of the likely level of minority  
 18 electoral success. Calling this racially  
 19 polarized voting is a question of interpretation  
 20 because I honestly other than Milwaukee have never  
 21 seen a situation where there is this absence of  
 22 opposition. Even in New York City where there are  
 23 overwhelmingly black or overwhelmingly Latino  
 24 districts there's usually a courtesy opponent who  
 25 provides some evidence about the degree to which

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1 there is racially polarized voting. Here there  
 2 are -- essentially the level of minority success  
 3 in old District 8 is so high that essentially no  
 4 one contests.  
 5 Q And how significant to you is to know about the  
 6 conduct in the 12th aldermanic district which is  
 7 squarely within that district, the assembly  
 8 district --  
 9 MR. HODAN: Objection.  
 10 Q -- where --  
 11 MR. HODAN: This is the third time  
 12 we have gone into this.  
 13 MR. EARLE: If you're going to  
 14 object to the question as being asked and  
 15 answered, which I think is what you're  
 16 hinting at, you should at least allow me to  
 17 finish the question so that the question is  
 18 there and then we will have your objection on  
 19 the record. All right? Fair enough?  
 20 MR. HODAN: Please continue.  
 21 Q I'm asking this in the context of your testimony  
 22 just now about repeated non-contested Latino races  
 23 in which there was no non-Latino candidate  
 24 competing against the Latino candidate. If we have  
 25 a history in that same neighborhood in the

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1 aldermanic race where repeatedly the white  
 2 candidate defeats the Latino candidate, how does  
 3 that factor into your view?  
 4 MR. HODAN: Objection, asked and  
 5 answered.  
 6 You can go ahead.  
 7 A As I previously testified, two things. First of  
 8 all, the aldermanic contests are non-partisan  
 9 contests and I place relatively little weight on  
 10 those because of the fact that three things are  
 11 true for these non-partisan contests. And here I  
 12 am elaborating on an answer to a previous question  
 13 because you're asking something specific.  
 14 Q I was hoping you would elaborate.  
 15 A There are basically three things that distinguish  
 16 the non-partisan and the partisan contests. The  
 17 first and most obvious is that there's a partisan  
 18 label on the ballot. That matters in terms of the  
 19 ability of the voters to have a cue which they can  
 20 respond to and it also matters in terms of those  
 21 who would wish to support democrats and their  
 22 election to the assembly as to whether or not they  
 23 might be willing to support to gain an additional  
 24 democrat in the assembly as opposed to allowing a  
 25 republican to win the seat.

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1 The second thing that happens in non-partisan  
2 contests as compared to partisan contests is all  
3 other things being equal the turnout in the  
4 non-partisan contest tends to be lower, all other  
5 things being equal. That's because there isn't a  
6 partisan cue and also sometimes in some  
7 jurisdictions the elections are held on a  
8 different time table. That's I don't believe  
9 relevant here though it may be for some of these  
10 contest.

11 The third thing that happens, and it is I  
12 think in many ways the most important of these --  
13 it's related to the absence of the partisan cue.  
14 Money matters more in non-partisan contests.  
15 Essentially when you don't have a partisan cue to  
16 guide the voter then the voter's way of making  
17 choices is going to be largely influenced by  
18 candidate visibility, candidate prominence, and  
19 that, in turn, is going to be influenced by the  
20 ability of the candidate to raise money. Insofar  
21 as the candidate can raise money absent a  
22 countervailing partisan cue, then that's going to  
23 give an advantage to whichever community is found  
24 that has the more money.

25 So what you get in the non-partisan contest

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1 relative to the partisan contests is that money  
2 matters more. So on balance taking these several  
3 things into account and also taking into account  
4 the presence or absence of a non-Hispanic white  
5 incumbent, what you often see in the non-partisan  
6 contests is that Hispanic candidates, A, choose  
7 not a run, and, B, do not do very well when they  
8 do run even within the Hispanic community. That I  
9 think is demonstrated in Exhibit 1025 of Mayer's  
10 deposition.

11 Q Give me a moment here. I might be done. I have  
12 just one loose end detail. I think I heard you  
13 say at one point during Mr. Poland's examination  
14 that -- I think you used words to the effect of  
15 all experts agree that Act 43 places the 8th and  
16 9th assembly districts in the geographic area that  
17 encompasses the Latino community. Was that your  
18 testimony?

19 A Yes. That's correct. As shown on the exhibit  
20 that accompanies my declaration. What I mean by  
21 that is no more than what is shown in that  
22 exhibit. If you look, you will see the areas of  
23 Latino population.

24 Q But that doesn't mean that the Latino vote was not  
25 diluted because it also includes areas where the

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1 Latino concentration is substantially less than in  
2 the core community, correct?

3 A It includes some non-Hispanic white voters. The  
4 exact proportion of non-Hispanic white voters is  
5 in fact shown in my declaration in Exhibit --

6 Q That colored map at the back of --

7 A No. Actually, the exhibit that I want to call  
8 your attention to is the Act 43 non-white  
9 population and non-white voting age population.  
10 That's Exhibit B in my declaration. What you see  
11 there is that there only are less than 23 percent  
12 whites in the district. As you take 100 percent  
13 and subtract 77.17 percent in 8, what you will  
14 discover is that's a number that's less than  
15 23 percent and so therefore the only whites who  
16 are there make up 23 percent of the district  
17 population and not quite 30 percent of the  
18 district voting age population.

19 MR. EARLE: I have no further  
20 questions.

21 MR. POLAND: I have a couple of  
22 follow-up questions.

23  
24  
25

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RE-EXAMINATION

1 By Mr. Poland:

2 Q Would you take a look, please, at Exhibit 143.  
3 That is the Voces complaint.

4 MR. HODAN: I'll give you my copy  
5 here.

6 A It's here. Thanks to a marvelous organizational  
7 scheme otherwise known as putting these things in  
8 numerical order that I should have done for myself  
9 but I am very glad to have done for me -- I don't  
10 want to say in the absence of my wife but of my  
11 research assistant but in any case very delighted  
12 to have this. I can actually find Exhibit  
13 No. 143. Please. I would be delighted to respond  
14 to your question.

15 Q All right. Thank you. Would you please turn to  
16 Paragraph 25 of Exhibit 143.

17 A Yes.

18 Q I believe that you answered Mr. Earle's question  
19 about Paragraph 25 that you do agree with  
20 Paragraph 25; is that correct?

21 A Yes.

22 Q Would you also agree that Milwaukee's African  
23 American community bears the socioeconomic effects  
24 of historic discrimination in employment,  
25

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1 education, health and other areas?  
 2 A Yes.  
 3 Q Does the degree of segregation in an urban area  
 4 affect potentially the ability of minority voters  
 5 in minority districts to elect candidates of  
 6 choice?  
 7 A Yes, but the affects go in sort of opposite  
 8 directions. The most important affect is that  
 9 when you have a concentrated minority population  
 10 then it is easier to draw a district in which  
 11 minorities have a realistic opportunity, equal  
 12 opportunity, to elect candidates of choice.  
 13 Actually, that would be the affect that I would  
 14 regard as the only really important affect. There  
 15 is historic affects of discrimination practices,  
 16 but those are generally found for African  
 17 Americans wherever African Americans may be found.  
 18 Q That means you can draw a district. If it's  
 19 heavily concentrated you can.  
 20 A Yes.  
 21 Q You could also draw a district to incorporate  
 22 non-minority areas, white areas, with high turnout  
 23 that could also serve to dilute the minority vote  
 24 as well, correct?  
 25 A In principle it's always possible to draw  
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1 districts which include populations different than  
 2 the minority population. Again, whether or not  
 3 that will have a dilutive affect depends on what  
 4 is the additional population.  
 5 Q Milwaukee is a very heavily segregated city. Is  
 6 that fair to say?  
 7 A I haven't looked at the overall city of Milwaukee,  
 8 but insofar as the patterns are absolutely clear  
 9 in terms of Hispanic population concentrations and  
 10 African American population concentrations with  
 11 such a high proportion of the total city's  
 12 minority populations concentrated in particular  
 13 senate districts, then it seems to me that that  
 14 has to be correct.  
 15 Q I'm going to hand you a copy of a document that we  
 16 marked as an exhibit yesterday, Exhibit 127. This  
 17 one does not bear the labels because we haven't  
 18 received them back yet from the court reporter.  
 19 As you will see from the first page in Exhibit 127  
 20 it's a Salon.com article from March 29, 2011  
 21 entitled The Ten Most Segregated Urban Areas in  
 22 Milwaukee (sic). What I would like to do is draw  
 23 your attention to -- it's the second to the last  
 24 of the pages that has printing on it.  
 25 A Yes.  
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1 Q And it's got a map of the City of Milwaukee.  
 2 A Yes.  
 3 Q If you see -- according to this article at least  
 4 it identifies Milwaukee as the number one most  
 5 segregated urban area in America. Do you see  
 6 that?  
 7 A Yes.  
 8 Q And there is a map that appears that shows,  
 9 portrays, heavily concentrated African American  
 10 areas in the north side of the city, correct?  
 11 A Yes.  
 12 Q And heavily concentrated Latino areas in the south  
 13 side of the city, correct?  
 14 A In what is essentially the south middle side, yes.  
 15 South of the heavily African American populations.  
 16 Q I'm just asking you generally. Is the  
 17 identification of the location of the  
 18 concentrations of minorities as depicted in  
 19 Exhibit 127 consistent with your general  
 20 understanding?  
 21 A Yes.  
 22 MR. POLAND: I don't have any  
 23 further questions.  
 24 MR. HODAN: Let's go off the record  
 25 for two minutes. I may just have a couple  
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1 and then we're done.  
 2 (Recess)  
 3  
 4 EXAMINATION  
 5 By Mr. Hodan:  
 6 Q Professor Grofman, I just have a couple of quick  
 7 questions. Earlier today you were asked about  
 8 when you first had a conversation with me in  
 9 connection with this case, and I believe you said  
 10 it was with Mr. Troupis sometime in August.  
 11 A Uh-huh.  
 12 Q We have had some discussions and I told counsel  
 13 during a break that we were first retained in  
 14 November, November 22nd, in this case. Does that  
 15 jog your memory in terms of when you and I first  
 16 spoke?  
 17 A Yes, it does.  
 18 Q And when was that?  
 19 A That would have been sometime in very late  
 20 November around November 22nd. That would have  
 21 been my first conversation and the first issue of  
 22 whether or not I would actually be retained in  
 23 this case.  
 24 Q And you recall that Attorney Lazar was on that  
 25 phone call?  
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1 A With prodding to my memory I am delighted to  
2 recall that fact, yes.  
3 Q And do you recall that Mr. Kelly was on that phone  
4 call?  
5 A Again, I do.  
6 Q So that was the first time you talked to anyone at  
7 our firm about --  
8 A Yes.  
9 Q -- representation in this case?  
10 A That's correct.  
11 MR. HODAN: I have no further  
12 questions.  
13 MR. EARLE: Just a couple  
14 follow-ups on that.  
15  
16 RE-EXAMINATION  
17 By Mr. Earle:  
18 Q Using that as the departure point, November 22nd  
19 now that your memory has been jogged, did you have  
20 conversations with Troupis and/or Eric McLeod  
21 before that?  
22 A Yes, I did. That was conversation basically to  
23 inform me about the posture of the case and the  
24 possibility that I might be sought by someone to  
25 be hired.

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1 Q Let's talk about that. Now that your memory is  
2 jogged we will get more details about this.  
3 A Uh-huh.  
4 Q Those conversations and earlier in November before  
5 November 22nd, they included Eric McLeod from  
6 Michael Best & Friedrich?  
7 A I believe that is the case. They included an  
8 attorney. I honestly couldn't tell you without a  
9 memory jog who that attorney was.  
10 Q Was it a single attorney or multiple attorneys?  
11 A I'm not sure. It was a conference call.  
12 Q It was a conference call with an attorney?  
13 A And Troupis.  
14 Q And who were the other people? Was Joe Handrick  
15 one of the other people?  
16 A No. I don't believe so.  
17 Q Was Adam Foltz? Does that name ring a bell?  
18 A No. At least as far as I know we were -- to the  
19 best of my recollection we're talking about  
20 attorneys.  
21 Q So how many people were on the conference call  
22 with you?  
23 A I'm not sure. Probably two besides myself, but  
24 I'm not sure. It could have been more than that.  
25 I really don't know the answer to that.

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1 Q Was there any kind of contractual arrangement  
2 between you and the other attorneys before  
3 November 22nd?  
4 A No. None whatsoever.  
5 Q They didn't pay you --  
6 A No.  
7 Q -- for any work or anything like that?  
8 A No.  
9 Q How long did that conversation last?  
10 A I don't know. Twenty minutes, half an hour.  
11 Something like that.  
12 Q Some of the E-mails indicated that somebody  
13 Mr. Troupis' office had sent you some maps at your  
14 request.  
15 A Yes.  
16 Q How much work did you do looking at those maps  
17 before November 22nd?  
18 A Probably reasonably -- reasonably close to none.  
19 I simply opened them up and looked at them. But I  
20 was not -- I was neither retained nor promised the  
21 retention. Merely that when the exact structure  
22 of the attorneys involved in the case became  
23 clarified that Mr. Troupis would suggest to  
24 whoever those attorneys were that I might be  
25 someone who would be appropriate to retain.

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1 Q Were you cued in on what the issues were from  
2 Mr. Troupis' perspective in those conversations in  
3 earlier November?  
4 A I think the easiest way to say that is that he  
5 indicated that my testimony would be similar to  
6 the kind of testimony that I gave in the last  
7 round.  
8 MR. HODAN: I also want to object  
9 to that last question because I think you  
10 said earlier November. I don't believe he's  
11 testified that he had a conversation with  
12 Mr. Troupis in early November. If you mean  
13 earlier than November --  
14 MR. EARLE: Let's clarify that  
15 because that was my understanding; that he  
16 had testified to that fact.  
17 MR. HODAN: I don't believe so.  
18 A I'm not sure. I honestly couldn't tell you. My  
19 best recollection is we are probably talking about  
20 sometime in mid to late August, but I'm sure about  
21 that.  
22 Q After you returned from France?  
23 A Right after I returned from France and before I  
24 left for Italy.  
25 Q When did you leave for Italy?

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VIDEOTAPE DEPOSITION OF BERNARD N. GROFMAN, Ph.D. 2/3/2012

1 A I believe I left for Italy on August 22nd.  
2 Q When did you come back from Italy?  
3 A I came back from Italy on October 9th.  
4 Q Could it have been after October 9th that you  
5 talked to Troupis?  
6 A It's possible.  
7 Q Did you generate any paper during this period of  
8 time before --  
9 A No. Nothing whatsoever.

10 MR. EARLE: I have no further  
11 questions.

12 MR. POLAND: No questions.

13 MR. HODAN: Wonderful.

14 (Adjourning at 4:44 p.m.)

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interested in the action.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 6th day of February 2012.

7 \_\_\_\_\_  
Notary Public, State of Wisconsin  
Court Reporter

9 My commission expires  
June 23, 2013

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1 STATE OF WISCONSIN )  
 ) ss.  
2 COUNTY OF DANE )

3 I, SUSAN C. MILLEVILLE, a Court Reporter and  
4 Notary Public duly commissioned and qualified in and  
5 for the State of Wisconsin, do hereby certify that  
6 pursuant to subpoena, there came before me on the 3rd  
7 day of February 2012, at 10:12 in the forenoon, at  
8 the offices of Reinhart Boerner Van Deuren, S.C.,  
9 Attorneys at Law, 1000 North Water Street, the City  
10 of Milwaukee, County of Milwaukee, and State of  
11 Wisconsin, the following named person, to wit:  
12 BERNARD N. GROFMAN, Ph.D., who was by me duly sworn  
13 to testify to the truth and nothing but the truth of  
14 his knowledge touching and concerning the matters in  
15 controversy in this cause; that he was thereupon  
16 carefully examined upon his oath and his examination  
17 reduced to typewriting with computer-aided  
18 transcription; that the deposition is a true record  
19 of the testimony given by the witness.

20 I further certify that I am neither  
21 attorney or counsel for, nor related to or employed  
22 by any of the parties to the action in which this  
23 deposition is taken and further that I am not a  
24 relative or employee of any attorney or counsel  
25 employed by the parties hereto or financially

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# VIDEOTAPE DEPOSITION OF BERNARD N. GROFMAN, Ph.D. 2/3/2012

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VIDEOTAPE DEPOSITION OF BERNARD N. GROFMAN, Ph.D. 2/3/2012

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